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pt. 1

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

[No. 87-16]

HEARINGS

BEFORE THE

SPECIAL SUBCOMMITTEE ON THE FEDERAL-
AID HIGHWAY PROGRAM

OF THE

COMMITTEE ON PUBLIC WORKS
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

PART 1

FEBRUARY 5, 6, 7, 8, 9, 19, AND 20, 1962

Printed for the use of the Committee on Public Works



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CONTENTS

Testimony of—

Barca, Joseph J., Leominster, Mass., realtor, accompanied by Max Kabatznick, counsel.....	Page 550
Beasley, Oscar H., of the firm of Beasley & Beasley, valuation engineers, Washington, D.C.....	226, 515
Beaulieu, Adrian A., West Bridgewater, Mass.....	42
Bennett, Arthur Thomas, Needham, Mass., division right-of-way engineer, U.S. Bureau of Public Roads, Massachusetts division, Boston, Mass.....	558
Collins, Ernest, treasurer, French & Davol, accompanied by John O'Donoghue, counsel.....	238, 277
Constandy, John P., assistant chief counsel, Special Subcommittee on the Federal-Aid Highway Program.....	395, 551
DiNatale, Anthony, Milton, Mass., member of Massachusetts Toll Road Authority.....	373
Dodge, Herbert L., Needham, Mass., civil engineer.....	420
Dole, Fred B., Shelburne Falls, Mass., accompanied by George W. Gold, counsel.....	393
Dwyer, John D., lawyer, Medford, Mass., and Joseph H. Elcock, Jr., Wellesley Hills, Mass.....	73
Ellis, Lester J., Milton, Mass., real estate consultant.....	447
Harney, Frank L., Wellesley, Mass., accompanied by Douglas G. Mode, counsel.....	370
Herbits, William, lawyer, Boston, Mass.....	54
Hopkins, Errol G., negotiator, Commonwealth of Massachusetts.....	325
Hunneman, Carleton, Milton, Mass., president of Hunneman & Co., Inc., Boston, Mass., and Alfred H. Dolben, Reading, Mass., member of the firm of William H. Dolben & Son, Boston, Mass.....	608
Kelly, Michael F., accompanied by Francis X. McLaughlin, counsel.....	487
Lawton, Charles H., Jr., Pawtucket, R.I., accompanied by Harold M. Cole, counsel.....	198, 322
Logan, Charles N., Lincoln, R.I., owner, Logan Machine Co., South Attleboro, Mass.....	114
Lonzo, Everett B., Fitchburg, Mass., realtor.....	529
Lyons, Joseph F., assistant attorney general, Commonwealth of Massachusetts.....	688
Myette, Felix J., real estate salesman, Pawtucket, R.I.....	128
O'Connell, James S., Scituate, Mass., accompanied by C. Keith Hurley, counsel.....	351
O'Connor, Joseph M., program-evaluation officer, U.S. Bureau of Public Roads.....	101
Roddy, Fred M., Providence, R.I., president, H. & B. Building Corp., and Cumberland Engineering Co., Inc., South Attleboro, Mass.....	105
Rosenblatt, Max, Malden, Mass., former assistant attorney general, Commonwealth of Massachusetts, in charge of eminent domain section.....	648
Schoenhaut, Arthur, Assistant Director, Civil Accounting and Auditing Division, U.S. General Accounting Office, accompanied by Clerio P. Pin, supervising accountant, Civil Accounting and Auditing Division, and Charles E. Eckert, legislative attorney, Office of the General Counsel.....	4
Schwartz, Joseph, Fall River, Mass., accompanied by Harry S. Wender, counsel.....	259, 277
Sheridan, Edmund C., accompanied by Francis X. McLaughlin, counsel.....	462

Testimony of—Continued

Stevenson, Thomas S., regional right-of-way engineer, region I, Bureau of Public Roads, Albany, N. Y.-----	Page 18
Toumpouras, George C., accompanied by Henry F. O'Connell, Jr., Boston, Mass.-----	497
Webb, Walter M., Lynnfield, Mass.-----	162
Wisbach, G. Gale, president, Gale Motors, Inc., Fall River, Mass.---	63

APPENDIX

From report to the Congress by the Comptroller General of the United States:

Exhibit 1-A.—Pennsylvania, Maryland, and West Virginia, December 1959.-----	715
Exhibit 1-B.—Nevada and Arizona, February 1960-----	721
Exhibit 1-C.—Arkansas and Louisiana, July 1960-----	729
Exhibit 1-D.—Montana and Oregon, October 1960-----	730
Exhibit 1-E.—New Mexico and Wyoming, May 1961-----	738
Exhibit 1-F.—North and South Dakota, July 1961-----	749
Exhibit 1-G.—New Hampshire, Maine, and Vermont, August 1961--	759
Exhibit 1-H.—Michigan and Wisconsin, August 1961-----	769
Exhibit 1-I.—Tennessee, February 1962-----	775

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

MONDAY, FEBRUARY 5, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS,
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to call, at 10:05 a.m., in room 1302, New House Office Building, Hon. John A. Blatnik (chairman of the special subcommittee) presiding.

Present: Representatives Blatnik, Baldwin, Cook, Cramer, Edmondson, Fallon, Gray, Jones, Kluczynski, Robison, McVey, Scherer, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. The Special Subcommittee on the Federal-aid highway program will please come to order.

This is the first in a series of hearings to be conducted during the next several weeks relating to highway matters in the State of Massachusetts.

The Chair has, as usual, at the opening of a new category or series of hearings, an opening statement. We will be off the record.

(Discussion off the record.)

Mr. BLATNIK. The statement is as follows:

For the benefit of many in attendance who may not have a clear understanding of the functions of this subcommittee, the Chair desires to make a preliminary statement.

There was a spontaneous demand in Congress at the end of the 1959 session from Democrats and Republicans alike for an investigation of the Federal-aid highway program.

The chairman of the Committee on Public Works designated this subcommittee to undertake the investigation. We were given a mandate to inquire into the policies, practices, and procedures involved in the administration of this program.

Every member of this subcommittee is well aware of the magnitude of our task. It is measured by the magnitude of the program itself.

The subcommittee has realized from the outset that it is physically impossible to investigate every specific complaint that is brought to our attention.

To achieve maximum results from our investigative efforts we have used the categorical approach, analyzing as best we can those matters we feel have a broad application throughout the program.

From the beginning there has been insistence by the Chair on complete objectivity in the development and presentation of the evidence because our concern necessarily must be with bad practices, bad policies, and bad procedures.

We have given our attention initially to those matters which constitute major items of cost.

We have looked for and uncovered distinct operational patterns that have been undesirable, costly, or wasteful characteristics manifestly representative of conditions generally.

We have found grave deficiencies in testing and inspection procedures and serious inadequacy of controls at both the Federal and State levels. We have found many instances of blatant disregard for specifications at all stages of actual construction, the use of substandard and unsuitable material, shoddy workmanship, and many other things that were wrong.

In other hearings we have had irrefutable testimony of payoffs by contractors to State engineers who were supposed to be protecting the interests of both the Federal Government and the State.

We held hearings in 1961 which disclosed that a State road department had been guilty of mismanagement and waste in the disposition of the hundreds of buildings the State took over in connection with its construction program. The exercise of proper management and control would have saved the Federal Government and the State hundreds of thousands of dollars. And we know that this same condition prevails in a number of States other than Florida.

As a result of our hearings, drastic corrective measures have been put into effect on a national scale, with the Bureau of Public Roads and the American Association of State Highway Officials spearheading this activity.

Once again I want particularly to stress the point that in reviewing problems besetting the highway program we are dealing in categories.

Our interest is concentrated on the development of evidence and testimony about pernicious practices which we know, or have very excellent reason to believe, are illustrative of what is occurring on a broad scale.

The problem before us now is that of right-of-way.

Years ago right-of-way was a relatively minor item in terms of total highway construction cost. This is no longer true.

When Congress back in 1956 had before it the legislation calling for the construction of the Interstate System it was estimated that approximately 730,000 parcels of land would have to be acquired at a cost in excess of \$5 billion.

A year ago, the Secretary of Commerce reported to Congress that the estimate, by then, had exceeded \$6 billion. Two months later we had testimony right here in this room clearly implying that \$7 billion would be a more realistic figure.

When it is remembered that the Federal Government contributes 90 percent of the cost of interstate right-of-way and 50 percent on

other roads when programed, it seems unthinkable that there would be expenditures of such tremendous sums of money without proper and effective controls.

Our concern, therefore, for the adequacy of the policies, practices, and procedures involved in right-of-way acquisition for the Nation's highways is wholly understandable.

Right-of-way acquisition today has become a highly complex activity in which a delicate balance must be maintained between the obvious public interest on the one hand and the equities and the rights of property owners on the other.

During this subcommittee's hearings last year on another phase of right-of-way activity there was testimony that the Bureau of Public Roads made a study of right-of-way organizations in the various States prior to the passage of the 1956 legislation. The Bureau reached the conclusion at that time that neither it nor the States were adequately equipped to handle properly the accelerated activity in the right-of-way field contemplated by the act of 1956.

One of the issues now before us is the determination of what the Bureau and the States have since accomplished in the way of bringing their right-of-way divisions up to required standards.

Congress needs to know if the right-of-way function has received the top level attention it so obviously merited.

Eminent domain is defined in law as the exercise of a State's sovereign power to appropriate, in exchange for reasonable and just compensation, all or any part of private property for which there is a necessary public use.

Thus the pursuit of the right-of-way function has an importance that does not attach to any other phase of highway construction because there is a tremendously significant impact upon human lives, and a correspondingly significant involvement of property and constitutional rights.

While there is a duty imposed on the State to see that the public interest is served, there is also an equal responsibility to safeguard the rights of the individual and to extend the courtesy and consideration to which that individual is entitled.

If practices exist which result in manipulation or distortion of values, these rights are threatened. If the principle of just compensation is somehow subverted into an instrument for unjust enrichment, then the public interest suffers.

In the hearings beginning today we expect to review right-of-way practices in Massachusetts.

The first witness called for this morning is Mr. Arthur Schoenhaut of the General Accounting Office.

Mr. Schoenhaut will please take the witness chair. He will be accompanied by Mr. Charles E. Eckert, legislative attorney, Office of the General Counsel, General Accounting Office; and Mr. Clerio P. Pin, supervising accountant, Civil Accounting and Auditing Division, General Accounting Office.

Mr. Schoenhaut, will you please stand and be sworn? Do you solemnly swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SCHOENHAUT. I do.

**TESTIMONY OF ARTHUR SCHOENHAUT, ASSISTANT DIRECTOR,
CIVIL ACCOUNTING AND AUDITING DIVISION; ACCOMPANIED BY
CLERIO P. PIN, SUPERVISING ACCOUNTANT, CIVIL ACCOUNTING
AND AUDITING DIVISION; AND CHARLES E. ECKERT, LEGISLA-
TIVE ATTORNEY, OFFICE OF THE GENERAL COUNSEL, GENERAL
ACCOUNTING OFFICE**

Mr. BLATNIK. Mr. Eckert, will you please identify yourself?

Mr. ECKERT. I am Charles E. Eckert, legislative attorney of the Office of the General Counsel, General Accounting Office.

Mr. PIN. I am Clerio P. Pin, supervisory accountant, Civil Accounting and Auditing Division, General Accounting Office.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Chairman, as you are aware, you requested the Comptroller General to make available his representatives to summarize here the results of the General Accounting Office examination over the past few years into the right-of-way activities connected with the Federal-aid highway program on the part of the Bureau of Public Roads. This is being done to show the wide range of problems involved in the right-of-way program and to show that deficiencies have been found to be widespread, and have been found in a great number of States by the General Accounting Office.

Mr. Schoenhaut, do you have a statement to make?

Mr. SCHOENHAUT. I do.

Mr. BLATNIK. Would you please read your statement, Mr. Schoenhaut?

Mr. SCHOENHAUT. Mr. Chairman and members of the subcommittee, we appear before you today at the request of the chairman to summarize for your information the results of our examinations over the past 6 years into selected right-of-way activities as administered by the Bureau of Public Roads, Department of Commerce, under the Federal-aid highway program. With me today are Mr. Charles E. Eckert, legislative attorney, Office of the General Counsel; and Mr. Clerio P. Pin, supervisory accountant, Civil Accounting and Auditing Division.

The Bureau of Public Roads is designated by law as the agency to administer the role of the Federal Government in the Federal-aid highway program. A basic characteristic of this program is that it is carried out by the individual States subject to Federal-aid highway legislation and related regulations prescribed by the Bureau. The States are reimbursed by the Federal Government through the Bureau for a specified percentage of the eligible costs. One of the Bureau's principal functions is to see that Federal-aid highways are planned and constructed as efficiently and economically as possible.

The function of the General Accounting Office as an independent agency in the legislative branch of the Government is to examine the manner in which Government agencies discharge their financial responsibilities and to make recommendations looking to maximum economy and efficiency in public expenditures.

Within this sphere of responsibility and with due regard to the governing Federal-aid highway legislation and regulations, our audit effort at the Bureau of Public Roads is directed toward consideration

of the effectiveness of the various actions taken by the Bureau in administering its responsibilities and the ultimate effect of these actions on the substantial sums of money involved in the Federal-aid highway program. Particular emphasis is placed on those aspects of agency management which, in our considered judgment, warrant improvement.

The matters disclosed by our review of the Bureau's administration of selected activities of the Federal-aid highway program in 20 States have been the subject of eight reports to the Congress since 1959.

We have brought copies of these reports with us for use and consideration by the subcommittee.

Principal among the matters contained in these reports are certain conditions which we believe were detrimental to effective administration of the large-scale program for acquisition of rights-of-way that was initiated by enactment of the Federal-Aid Highway Act of 1956. These conditions are of importance in that they represent problems and procedural failings in an activity which depends for its successful execution principally, if not entirely, on a sound system of control which should embody comprehensive and clearly defined procedures effectively enforced at all levels of the State highway departments and the Bureau.

This dependence stems as a practical necessity from the substantial cost of highway rights-of-way; the many thousands of individual parcels in each State; the numerous occasions of contact among property owners, State representatives, and others in negotiating for property acquisitions; the many interrelated actions involved in the purchasing process; and the easy vulnerability of right-of-way transactions to various forms of impropriety.

In a report on our examination of selected activities of the Bureau of Public Roads, transmitted to the Congress in July 1959, we summarized a number of matters that had previously been reported to the Bureau in fiscal years 1955 and 1956 concerning its administration of right-of-way activities. On the basis of reviews of right-of-way activities at selected Bureau field offices, we had noted that:

(1) Reimbursements had been made by the Bureau, or were contemplated, for rights-of-way in amounts which were not properly supported;

(2) State right-of-way procedures were in certain respects inadequate to prevent unnecessary expenditures for construction;

(3) Bureau field personnel were not sufficiently informed on State acquisition practices; and

(4) the Bureau had no established policy for disallowance of questionable right-of-way claims.

We had also observed that the Bureau had been experiencing difficulty in staffing its offices with qualified auditors and right-of-way appraisers to carry out its policies. This inadequate staffing, together with State submissions of large numbers of claims at irregular intervals, had contributed to the accumulation of backlogs in audits of reimbursements made to States for expenditures for rights-of-way. In these circumstances, there was no reasonable assurance that the States' acquisition practices were effective or in compliance with the Bureau's policies.

Since the transmittal of our 1959 report, we have issued eight reports in which we called attention to a wide range of problems in right-of-way, some of which were similar to those previously reported. For convenience of presentation, we have grouped these problems into two general categories covering the principal actions involved in the acquisition of rights-of-way:

- (1) Appraisal of rights-of-way; and
- (2) Negotiation for acquisition of rights-of-way.

It should be understood that each of the conditions cited is not necessarily applicable to each of the States that we examined. Viewed from the standpoint of the Bureau's responsibility for exercising appropriate administrative controls over the expenditure of Federal-aid highway funds, these conditions focused attention on the need for strengthening Bureau requirements and compliance therewith in respect of State claims for reimbursement of the Federal share of right-of-way costs.

DEFICIENCIES IN APPRAISAL PROCEDURES, DOCUMENTATION, AND REVIEW

1. Appraisal reports for acquisition of rights-of-way lacked essential information concerning the basis of which values were established for land, improvements, and damages to remainder lands.

2. Where two or more appraisals were obtained, wide variations between appraisal values were frequently not adequately explained in determining actual settlements with property owners.

3. Appraisal values had been changed in appraisal reports, without showing the dates of changes or identity of persons making the changes, and in most instances, the reasons for the change.

4. Appraisal reports in certain cases contained clear indications that the appraisers had collaborated in the preparation of their separate appraisal reports. In our opinion the intended purpose of separate appraisals as an element of control is defeated when appraisers collaborate in preparing their appraisal reports and the Government is participating in the cost of two appraisals without receiving the full benefits of two independently determined estimates of value.

5. Noncompensable items, such as personal property and loss of rent, have sometimes been included in the acquisition price of particular right-of-way parcels. Also, internal controls over the sale or salvage of improvements were not sufficiently effective.

6. Several States had not adopted adequate written policies, procedures, and reporting formats to facilitate satisfactory control over all phases of rights-of-way acquisition, and until January 1960, the Bureau did not provide any criteria as to the type or content of appraisals which would be acceptable to the Bureau in support of claims for Federal reimbursement.

7. Contracts with commercial appraisers specified daily rates to be paid by the State when the appraisers' services were utilized. No limits were stipulated as to the time allowed for individual appraisals. Therefore, the cost of an appraisal was not determinable by the State until a bill was received from the appraiser. We believe that the reasonableness of fees paid to commercial appraisers should be subject to prior evaluation by the State.

8. Although provided for by its procedures, the Bureau either had not adequately reviewed or had not documented its reviews of the right-of-way procedures and practices of several States.

WEAKNESSES CONCERNING NEGOTIATION PRACTICES AND PROCEDURES

1. Right-of-way parcel files in certain instances did not contain documentation indicating the limits, based on appraised valuations, within which State negotiators were authorized to make property settlements. The lack of such limits weakened control over the negotiation process and may have contributed to some settlements which exceeded the highest appraisals by relatively significant amounts.

2. Right-of-way parcel files did not contain reasonable justification for special considerations given to grantors during negotiations. Negotiators apparently were free to grant special considerations in the form of free rental and retention of facilities comprising the property after the State acquired the rights-of-way. The value attributed to special considerations that are not fully justified should be handled in the same manner as any other unsupported deviations from appraisals—by deduction from the State's claim.

3. Right-of-way acquisition files reviewed often did not indicate the name of the negotiator or the date of initial contact with the property owner. Bureau policies specifically state that:

Federal participation will not be allowed in the cost of any parcel of land where the negotiations therefor were carried on by the same person who made the appraisal thereof.

In order to determine whether the appraisal and negotiation functions are properly separated, as required by the Bureau's policies, it is essential that the particulars of the negotiation process be fully documented and recorded.

4. Settlements with property owners have been made by States in amounts considerably in excess of valuations established in existing appraisals, without satisfactory documentation as to the basis upon which final settlement prices were determined.

5. Supplemental appraisals were made after agreements of sale had been executed in what appeared to be an attempt to support settlement prices which exceeded the values shown in appraisals existing at the time of settlement. We also noted instances wherein negotiations to acquire rights-of-way were commenced before appraisal reports had been received.

6. Insufficient leadtime to appraise and negotiate for highway rights-of-way necessitated condemnation proceedings which resulted in negotiated settlements and court awards to property owners that were substantially higher than State offers based on State appraisal valuations.

The Bureau has advised us that the problems summarized above could be attributed to sudden expansion of the highway program and the need for a period of adjustment of State practices to meet Federal requirements pertaining to acquisition of rights-of-way. The Bureau has taken measures over the past several years to remedy many of these matters, principally through the issuance of new or revised policy statements and other communications to its field units and to the States. The Bureau has also agreed to reexamine certain trans-

actions in the light of our findings, or to give consideration to our findings in examining States' final claims for reimbursement of the costs of particular projects: in certain instances Federal participation in the cost of specific transactions has been disallowed by the Bureau.

While we have noted some indication of improvement in the administration of right-of-way activities as Bureau direction and encouragement of the States have become more specific, our reviews continue to disclose certain basic weaknesses and problems. In an activity of the financial dimensions of right-of-way in the Federal-aid highway program, there will continue to exist for some time a need not only for improving policy statements as experience may dictate but also for aggressive effort by the Bureau to assure the full implementation of its policies.

We believe that the presently constituted working relationship between the States and the Federal Government, as created by Federal legislation, is basically sound in carrying out the Federal-aid highway program. It is our view, however, that Bureau management of the Federal-aid highway program should recognize that the States are not uniform in their capabilities to plan and execute highway projects and that the extent of Bureau review and control over State highway activities should be governed by the demonstrated competency of the respective State highway departments.

That concludes our statement, Mr. Chairman.

Mr. MAY. Thank you, Mr. Schoenhaut.

Mr. Chairman. I would ask that the reports made available by Mr. Schoenhaut be made exhibit 1-A through 1-H.

Mr. BLATNIK. Without objection, it is so ordered.

(The documents referred to were marked for identification and received as exhibits 1-A through 1-H and appear in the appendix.)

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Schoenhaut, I would like to discuss several points mentioned by you.

You mentioned that these examinations by the General Accounting Office have taken place over the past 6 years.

Mr. SCHOENHAUT. That is right.

Mr. MAY. You also mentioned that your review of the Bureau of Public Roads administration of the Federal-aid highway program covered 20 States.

Mr. SCHOENHAUT. That is correct.

Mr. MAY. For the benefit of the subcommittee, could you name those 20 States, Mr. Schoenhaut?

Mr. SCHOENHAUT. Maryland, Pennsylvania, West Virginia, Arizona, Nevada, California, Montana, Oregon, New Mexico, Wyoming, North Dakota, South Dakota, Michigan, Wisconsin, Maine, New Hampshire, and Vermont.

Mr. MAY. Massachusetts was not one of those States in which you did this review?

Mr. SCHOENHAUT. I think I left three out, Mr. May—Arkansas, Louisiana, and Oklahoma. I'm sorry.

Mr. MAY. You now have 20?

Mr. SCHOENHAUT. I now have 20.

Mr. MAY. Massachusetts was not one of those 20 States?

Mr. SCHOENHAUT. That is correct.

Mr. MAY. Were deficiencies found in all 20 States?

Mr. SCHOENHAUT. In varying degrees our examinations have disclosed deficiencies similar to those that we read off in just about all of the States. Yes, sir.

Mr. MAY. I think we should stress and it should be mentioned again that all should understand that each of the conditions or deficiencies cited by you were not necessarily applicable to each and every State you mentioned.

Mr. SCHOENHAUT. That is correct.

Mr. MAY. I would like to restate one of the deficiencies mentioned by you.

Mr. CRAMER. May I ask a question, Mr. Chairman?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. With respect to a point that was brought up about Massachusetts. Why was not a study of Massachusetts made in view of the other studies that were going on by the Bureau of Public Roads and otherwise? Weren't you a part of that survey of right-of-way practices in Massachusetts that has been going on now for a year and a half or 2 years?

Mr. SCHOENHAUT. No, sir; we were not.

Mr. CRAMER. Was any other division of the General Accounting Office assigned to that?

Mr. SCHOENHAUT. No. We had a couple of people from one of our regional offices, I think out of Boston, assigned to this committee, to help them in their investigation.

Mr. CRAMER. Prior to that the Bureau of Public Roads was investigating it through Beasley & Beasley, and otherwise. Was the General Accounting Office not a part of that investigation?

Mr. SCHOENHAUT. No, sir; we were not.

Mr. CRAMER. Why was Massachusetts omitted when there were obvious right-of-way problems in Massachusetts?

Mr. SCHOENHAUT. We haven't gotten to all of the States yet. There are many besides Massachusetts. At the time that the investigation by the Bureau of Public Roads was started, or the survey was started, we were aware of the investigation, and we were also aware that there were many other investigators and auditors, in Massachusetts, combing the files, and we did not choose to leap into the investigation in Massachusetts.

Mr. CRAMER. I am not suggesting that you were asked to leap in any place, but you were investigating in some 20 States and it has been pretty widely acknowledged and publicized that Massachusetts has had a right-of-way matter under investigation for a year and a half or 2 years. Do you mean you didn't have any General Accounting Office people working with Beasley & Beasley and the Bureau of Public Roads since the committee started their investigations a couple of years ago?

Mr. SCHOENHAUT. No, sir; we did not. I might point out that these examinations in 20 States were not carried on simultaneously. There is a limit to how much the General Accounting Office at one time can undertake, and we choose the States we go into.

Mr. CRAMER. Then no one in your office can testify as to what the problems in Massachusetts were?

Mr. SCHOENHAUT. That is correct.

Mr. MAY. Mr. Schoenhaut, it is not the policy of the General Accounting Office to rush in and conduct an investigation in any State where there happens to be an allegation. Is that true?

Mr. SCHOENHAUT. That is correct, and these 20 States were taken on as a routine auditing function.

Mr. MAY. And this subcommittee began its investigation and opened an inquiry in Massachusetts, and immediately the General Accounting Office made available to us three expert accountants to help us with this investigation, did it not?

Mr. SCHOENHAUT. That is right.

Mr. MAY. And those people are thoroughly aware of the information developed during the course of our investigation?

Mr. SCHOENHAUT. That's right.

Mr. SCHWENGEL. Mr. Chairman.

Mr. BLATNIK. Mr. Schwengel.

Mr. SCHWENGEL. I would like to ask the gentleman what rule the General Accounting Office follows in selecting the States. If it isn't one that shows necessity do you just take them at random, or pull them out of a hat, or take a list of States where there are apparently problems?

Mr. SCHOENHAUT. There are several things. One is the amount of money being expended by the States in a particular activity. Another is the availability of staff in our regional offices. We may have them for a Public Roads audit out in Montana, out of our Seattle office, but do not have them in Massachusetts out of our Boston office. So it is a combination of circumstances. Possible problem areas are a consideration, but not the only consideration.

Mr. BALDWIN. Will the gentleman yield?

You mentioned you had a Boston office. What States are covered out of your Boston office?

Mr. SCHOENHAUT. The New England States chiefly.

Mr. BALDWIN. What States in New England has your Boston office been working on?

Mr. SCHOENHAUT. They have worked in Maine, New Hampshire, and Vermont.

Mr. BALDWIN. In Maine, New Hampshire, and Vermont?

Mr. SCHOENHAUT. Yes, sir.

Mr. BALDWIN. If I understand your testimony of a moment ago your investigation priority is determined by the amount of expenditures. Isn't it true the Federal Government made greater expenditures in Massachusetts than on the States you have actually devoted time to?

Mr. SCHOENHAUT. Yes, but it is only one consideration. Again there is the availability of the staff at a given time, the amount of expenditures by a particular State, and some indication of a problem area.

Mr. BLATNIK. The Chair would appreciate it if you would be considerate and cooperative in permitting questions to be asked to clarify a specific or pertinent point at the time in the inquiry, and not get too far afield on how the General Accounting Office works. I am sure we have a handbook to make available to the members to read at their leisure in the evenings. We do have a lot of territory to cover and many witnesses today.

I ask the cooperation of the members.

Mr. SCHWENGEL. I will try to be as brief as possible, Mr. Chairman. When did you do these investigations in Maine, Vermont, and New Hampshire?

Mr. SCHOENHAUT. We carried them on in 1959 and 1960, I believe.

Mr. SCHWENGEL. By this time it was quite well known in that area that there were real problems in Massachusetts and what kind of—

Mr. MAY. Is that true, Mr. Schoenhaut?

Mr. SCHOENHAUT. No, sir. At the time we initiated our work in Maine, New Hampshire, and Vermont, there had been no indication of problems, or at least we were not aware of any indication.

Mr. SCHERER. Will the gentleman yield?

Mr. SCHWENGEL. Yes.

Mr. SCHERER. You were aware, however, that the Bureau originally cut off funds from Massachusetts because of irregularities as early as January 1960, 2 years ago?

Mr. SCHOENHAUT. Yes, sir.

Mr. MAY. That was after you began your inquiry into these other States.

Mr. SCHERER. Just a minute, Counsel. As early as 1960, January 1960.

Mr. SCHOENHAUT. Yes, sir.

Mr. SCHERER. Have you done anything in Massachusetts other than to supply these accountants to the staff since 1960?

Mr. SCHOENHAUT. No, we have not.

Mr. SCHERER. You were aware of a great amount of publicity in the Boston papers concerning the frauds in Massachusetts, were you not, since May of 1960?

Mr. SCHOENHAUT. Yes, sir. We were also aware of the many investigative units that were in Massachusetts conducting investigations.

Mr. SCHERER. What were they? What units were in there other than the Bureau of Public Roads in May 1960?

Mr. SCHOENHAUT. We understood that the Bureau of Public Roads was in there and the State had an investigating committee, or unit of some sort, and we understood that some information had been given to the Department of Justice, and it was interested in the activities in Massachusetts.

Mr. SCHERER. You knew that this committee was in existence in January 1960, did you not?

Mr. SCHOENHAUT. Yes.

Mr. SCHERER. And you are an arm of the Congress for the purpose of supplying information concerning irregularities to the Congress?

Mr. SCHOENHAUT. That is correct.

Mr. SCHERER. That is all.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Let us make one point abundantly clear, Mr. Schoenhaut. Were you at any time advised, instructed, or requested by any person senior to you in your organization, or located elsewhere in the Congress or the administration, not to investigate anything in Massachusetts? Were you told to stay out?

Mr. SCHOENHAUT. We were not told that, and we were never told where to go either.

Mr. WRIGHT. Thank you.

Now, in the course of your inquiries you looked into some 20 States?
 Mr. SCHOENHAUT. That's right.

Mr. WRIGHT. Where, according to your testimony, you unearthed certain irregularities and certain deficiencies in State-controlled machinery, with particular reference to right-of-way matters, but with broader general reference to other matters as well. Is that correct?

Mr. SCHOENHAUT. That is correct.

Mr. WRIGHT. You did not in the course of that inquiry get into New Mexico, I believe. Is that correct?

Mr. SCHOENHAUT. We did. Yes, sir.

Mr. WRIGHT. You did get into New Mexico?

Mr. SCHOENHAUT. Yes, sir.

Mr. WRIGHT. Did you, during the course of that inquiry, get into Florida?

Mr. SCHOENHAUT. No, sir.

Mr. WRIGHT. So that the net you threw out was not one which would cover all the States, but, rather, one which would be expected to turn up a somewhat representative picture of what is going on in the States. Is that correct?

Mr. SCHOENHAUT. That is correct. Eventually we hope to get to all of them.

Mr. WRIGHT. It is just a matter of time?

Mr. SCHOENHAUT. That is right.

Mr. WRIGHT. There are 50 States, and you have been in 20 of them so far.

Mr. SCHOENHAUT. That is right.

Mr. WRIGHT. In these 20 you report certain deficiencies. I would like to know how general you found the deficiency No. 4 to be, where you say:

Appraisal reports in certain cases contained clear indications that the appraisers had collaborated in the preparation of their separate appraisal reports.

Was this found to exist in a number of States?

Mr. SCHOENHAUT. Yes, we did find it in a number of States. Yes, sir.

Mr. WRIGHT. Turning to the chairman's report this morning, there are some 730,000 parcels of land being taken throughout the country in this total program. He states a current estimate of the total cost of that acquisition might come close to \$7 billion.

If these deficiencies in controls on the part of the States were general and representative we could have a very, very costly thing taking place, couldn't we? We could have a lot of money slipping through the hands of the inspection and control machinery.

Mr. SCHOENHAUT. That is correct. That is the point we have brought to the attention of the Bureau of Public Roads and the Congress.

Mr. WRIGHT. And that basically is the general tenor of your report?

Mr. SCHOENHAUT. Yes, sir.

Mr. WRIGHT. That these things are not confined exclusively to any one State or one area of the country, but are somewhat general throughout the country.

Mr. SCHOENHAUT. That is the result of our examinations. Yes, sir.

Mr. WRIGHT. And at no time has anybody told you or undertaken to tell you what States to investigate first, or what States not to investigate?

Mr. SCHOENHAUT. Absolutely not. The choice is our own.

Mr. WRIGHT. Thank you.

Mr. COOK. Will the gentleman yield?

Mr. WRIGHT. Yes.

Mr. COOK. It is my understanding, sir, that you first began to make these reports in 1955 and 1956 to the Bureau of Public Roads and the Congress.

Mr. SCHOENHAUT. We directed them to the Bureau of Public Roads.

Mr. COOK. In 1955 and 1956?

Mr. SCHOENHAUT. In 1955 and 1956 we directed the reports to the Bureau of Public Roads.

Mr. COOK. And those reports included many of these same findings you reported here? Is that correct?

Mr. SCHOENHAUT. Yes.

Mr. COOK. As of the States you had studied at that time.

Mr. SCHOENHAUT. That's right.

Mr. COOK. Did you find anything after that time to show that the Bureau of Public Roads had undertaken any investigation of other States you had not covered as of the first report on these States?

Mr. SCHOENHAUT. The Bureau of Public Roads did not start investigating anything until the Project Examination Division was formed. I don't recall the exact date. I think it was sometime in, I would guess, 1958.

Mr. COOK. But as I understand it from your report here this morning, the Bureau of Public Roads had ample notice of this type of practice in the States you had investigated in 1955 and 1956?

Mr. SCHOENHAUT. Yes, sir.

Mr. CRAMER. I think the record should show the periods in which the reports were made. The first report is in December 1959 at Hagerstown, Md., and ends up with Maine, New Hampshire, and Vermont, in August 1961. All these reports were made during that entire period. Is that right?

Mr. SCHOENHAUT. That's right.

Mr. CRAMER. And the studies, of course, had to precede that.

Mr. SCHOENHAUT. That is correct.

Mr. CRAMER. And this is during the period in which all of the matters in Massachusetts occurred, and this report was not submitted till 1961.

Mr. SCHOENHAUT. That is correct. The examination was done in 1959 and 1960. It takes us awhile to get the reports out.

Mr. GRAY. One question.

Mr. BLATNIK. Mr. Gray.

Mr. GRAY. What distribution is made of these reports once the report has been finalized?

Mr. SCHOENHAUT. A copy goes to the Speaker of the House of Representatives. One copy goes to the President of the United States. Two copies go to the Bureau of the Budget. Two copies go to the House Committee on Appropriations. Three copies go to the House Committee on Government Operations. One copy goes to the House Committee on Public Works. One copy to the House Subcommittee

on Roads of the House Committee on Public Works. One copy to the Special Subcommittee on the Federal-Aid Highway Program of the House Committee on Public Works. One copy to the President of the Senate, and one copy to the Secretary of the Treasury. One to the agency, one to the Senate Committee on Appropriations, and one to the Senate Appropriations Subcommittee on General Government Matters, the Department of Commerce and Related Agencies; one to the Senate Committee on Government Operations; one to the Senate Committee on Public Works; one to the Senate Subcommittee on Roads of the Committee on Public Works; one to the Permanent Subcommittee on Investigations, Senate Committee on Government Operations; one to the Secretary of Commerce.

In addition, we send a copy of each report on a particular State to the entire congressional delegation of the State involved.

Mr. GRAY. I want to congratulate the gentleman and the staff for performing a very useful public service.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Schoenhaut, I would just like to mention some of the deficiencies already discussed by you, so that the subcommittee can be alert to these matters as these hearings progress.

You mentioned:

Appraisal reports for acquisition of rights-of-way lacked essential information concerning the basis on which values were established for land, improvements, and damages to remainder lands.

You also mentioned:

Appraisal values had been changed in appraisal reports, without showing the dates of changes or identity of persons making the changes, and in most instances, the reasons for the changes.

You also mentioned, and I quote:

Appraisal reports in certain cases contained clear indications that the appraisers had collaborated in the preparation of their separate appraisal reports.

Also you mentioned, and I quote:

Also, internal controls over the sale or salvage of improvements were not sufficiently effective.

You also mentioned, and I quote:

Although provided for by its procedures, the Bureau either had not adequately reviewed or had not documented its reviews of the right-of-way procedures and practices of several States.

You also mentioned one other item that I think bears repeating, and I quote:

Several States had not adopted adequate written policies, procedures, and reporting formats to facilitate satisfactory control over all phases of rights-of-way acquisition, and until January 1960 the Bureau did not provide any criteria as to the type or content of appraisals which would be acceptable to the Bureau in support of claims for Federal reimbursement.

I want to thank you very much, Mr. Schoenhaut, and I would like to say, Mr. Chairman, that we are deeply indebted to Comptroller Campbell and to the General Accounting Office for the continuous aid in all of our investigations.

Mr. BLATNIK. The Chair wants to concur in that. He has written several letters to the Comptroller General and his staff members. He has exceptionally competent men, completely independent. You have

been a big assistance in getting us the factual information which can be substantiated, and which has contributed so greatly to the success of all the hearings held so far. You have been most helpful in the very intensive, difficult, and tedious investigation carried out by our staff in this past period of more than 1 year.

Is there anything further?

MR. SCHERER. Mr. Chairman, I would not want the questions I asked to be interpreted to mean that I feel differently from the sentiments expressed by the chairman. I just want the record to show clearly from the witnesses' testimony that they cannot testify from their own knowledge to anything that happened in Massachusetts, which is the subject of the investigation here.

MR. BLATNIK. That is correct.

MR. FALLON. Will the gentleman yield?

MR. BLATNIK. Mr. Fallon.

MR. FALLON. Mr. Chairman, I would like to know if, Mr. Schoenhaut, of your knowledge, have these deficiencies been corrected in the various States that you have made these investigations of?

MR. SCHOENHAUT. Some steps have been taken by the individual States according to information supplied to us by the Bureau of Public Roads. In most instances we have not verified that the corrective action has actually taken place.

MR. CRAMER. Mr. Chairman, I have only one or two questions.

MR. BLATNIK. Mr. Cramer.

MR. CRAMER. I do want to make sure that my questions previously stated, or these, are certainly not intended to be critical of your activities, because you have obviously done a monumental amount of work.

It is a little difficult, however, to understand why the New England studies, in which Maine, New Hampshire, and Vermont were included, and in which you specifically pinpointed, and apparently pinpointed factually and properly a number of things in these States that are going to be shown as deficiencies that exist in Massachusetts too—it is difficult to understand as to why, with the amount of publicity given to the difficulties existing in Massachusetts and the fact that \$10 or \$12 million was withheld during the same period from Massachusetts, why Massachusetts was not made the subject of an investigation. I wish it were, because I am sure it would be equally helpful to this subcommittee in that respect as you are with respect to these other States.

The State of Massachusetts did have withheld by the Bureau of Public Roads a substantial sum of money in the last couple of years, and a good portion of that \$10 or \$12 million has been periodically returned or made available to the States in 90 percent Federal matching funds as these difficult cases are reviewed.

You stated in your opening statement:

The function of the General Accounting Office as an independent agency in the legislative branch of the Government is to examine the manner in which Government agencies discharge their financial responsibilities and to make recommendations looking to maximum economy and efficiency in public expenditures.

With that responsibility resting on your shoulders, do I understand you to say you were not consulted and did not see fit to consult with the Bureau of Public Roads in negotiating these questions in recent

years involving \$10 or \$12 million of Federal matching funds relating to irregularities in the acquisition of rights-of-way?

Mr. SCHOENHAUT. I wouldn't say that we hadn't consulted with the Bureau of Public Roads. We are aware of where they are conducting their investigations. We knew at the time that there was an indication of impropriety in Massachusetts, that the Bureau of Public Roads had assigned one of their top investigators full-time to the State of Massachusetts.

Mr. CRAMER. Who is that? Do you know?

Mr. MAY. Is that not Joseph O'Connor?

Mr. SCHOENHAUT. Joseph O'Connor. And at the same time we were in the midst of an examination in the States of Maine, Vermont, and New Hampshire, and did not have the staff or time to devote to Massachusetts. There are many other States we have not been to, despite some indication of irregularity. Prior to the Massachusetts material in the newspapers, I believe there was some in Florida, and we have not been to Florida.

Mr. CRAMER. That is quite true, and I think you should be in Florida, as well as any other State where there are serious improprieties and irregularities that exist. That is what your obvious function is, as you stated.

Mr. SCHOENHAUT. Both States are scheduled and programed for an examination in 1963—fiscal year 1963.

Mr. CRAMER. You mean Florida?

Mr. SCHOENHAUT. And Massachusetts.

Mr. CRAMER. I think it is long overdue in most States.

Mr. SCHOENHAUT. We do too, but unfortunately we do not have the staff to make examinations in all of the States as quickly as we would like to.

Mr. BLATNIK. I may say you are not alone in your problem. We were in Florida and had a rather trying time to extricate ourselves after a rather difficult hearing, and were only two-thirds of the way through in investigating the State of New Mexico, and were already being pressed to leave there and go to Massachusetts, and we have other States requesting us to come in. We sympathize with you in your attempt to cover such a tremendous field. You have made clear that your investigation covered all phases of Federal expenditures, not only civilian, but defense as well. Am I correct in that?

Mr. SCHOENHAUT. That is right.

Mr. BLATNIK. That is a tremendous order to cover a Federal budget, which gives a rather adequate and reliable yardstick of the order of magnitude of the activities involved.

Mr. SCHERER. Are you in Ohio now?

Mr. SCHOENHAUT. No, sir.

Mr. SCHERER. Are you aware that the Bureau of Public Roads has been conducting a rather extensive investigation in Ohio for quite some time?

Mr. SCHOENHAUT. Yes, we are aware of it.

Mr. SCHERER. I wanted to get it on the record.

Mr. CRAMER. The point I am getting at, and why I have gone into that, is we have gone into and we are still not through in Florida, and the committee asked the staff to cover Florida more thoroughly. So with respect to the Massachusetts situation, we had these deficien-

cies where we are now releasing Federal matching funds withheld because of suspected irregularities. As a matter of fact, a sufficient prima facie case of irregularities was made out to actually withhold the money. As a matter of practice and procedure, knowing what your responsibilities are, don't you have a responsibility to consult with the negotiating agency of the Bureau of Public Roads in protecting the public interest?

Mr. SCHOENHAUT. We do. To the extent of finding out exactly where they are investigating; and to the extent that they will tell us just what is involved in the investigation.

Mr. CRAMER. This is a case of settlement of Federal matching funds available that have been withheld because of a prima facie case of irregularities. When those settlements are made and negotiations are going on, does not the General Accounting Office have a responsibility to consult with and be a part of those negotiations?

Mr. SCHOENHAUT. Mr. Cramer, this withholding of funds has become a common and almost everyday occurrence someplace in the United States now. We are just not staffed to initiate an examination every time the Bureau of Public Roads cuts money off.

Mr. SCHERER. That is the complaint of the Bureau of Public Roads, too—that they do not have enough staff for discovering some of the alleged deficiencies, which you pointed out. The Bureau of Public Roads said that same thing to us, namely, "We do not have enough people to do the job as we would like."

Mr. SCHOENHAUT. This is quite probably true in the field of investigation.

Mr. SCHERER. I see you found some deficiencies existing in the procedures of the Bureau of Public Roads. I just wanted to point up the fact that the Bureau's excuse has been the same as yours, namely, that they do not have enough staff to keep on top of these things.

Mr. CRAMER. I find it difficult to accept the response that even though you were in New England and other States like Maine, New Hampshire, and Vermont, investigating this very subject matter, and even though \$10 or \$12 million was withheld because prima facie cases of irregularities have been made justifying the withholding of these moneys, and even though investigations were underway in settling the differences arising in those areas between the Federal Government and the State, that you didn't feel that you had personnel to allocate them to what I would say would be a priority job.

Mr. SCHERER. I think it has been made clear.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. The Chair would like to conclude this. Mr. Wright.

Mr. WRIGHT. If I understand your testimony correctly, you have not been in New York either?

Mr. SCHOENHAUT. We are now, but not until recently.

Mr. WRIGHT. Not until recently, and you have no report concluded as of this moment for the State of New York?

Mr. SCHOENHAUT. That is correct.

Mr. WRIGHT. So it was not a question on your part of trying to stay out of New York or trying to stay out of Massachusetts, or stay out of any place but, it was rather a question of your trying to extend the forces available to you to cover as much territory as you properly and effectively could. Is that what you were trying to do?

Mr. SCHOENHAUT. Yes, sir. That, plus the fact that there were several agencies, both of the Federal and State Governments already conducting investigations in Massachusetts.

Mr. WRIGHT. Was this true also in some other areas where you tried not to duplicate?

Mr. SCHOENHAUT. Absolutely. As a matter of fact, we coordinate with the Project Examination Division of the Bureau of Public Roads to the maximum extent possible to avoid having our people in a particular State at the same time their people are in a particular State, and to avoid having the people that are being interrogated from getting what we call, "auditor investigation sickness."

Mr. WRIGHT. You don't get up in the morning and pick up the newspapers to see where a scandal has been alleged to determine where you are going to audit today?

Mr. SCHERER. If they didn't they would be derelict in their duty, Mr. Wright.

Mr. SCHOENHAUT. We do watch the newspapers. Yes, sir.

Mr. SCHERER. I too watch the newspapers. I learned much about this hearing from what I read in the newspaper yesterday.

Mr. WRIGHT. I have briefly scanned your reports on these 20 States. I believe you have unearthed some very substantive material in those States. Do you feel it would have been dereliction of your duty to have abandoned those inquiries to get off into another area simply for the purpose of being where the publicity was?

Mr. SCHOENHAUT. It would be not only a dereliction of duty but it would be an extensive waste of manpower that had been poured into these States to make our examinations.

Mr. WRIGHT. Thank you.

Mr. BLATNIK. Thank you very much, Mr. Schoenhaut, and we thank your assistants and colleagues.

Mr. SCHOENHAUT. Thank you, sir.

Mr. BLATNIK. Our next witness is Mr. Thomas S. Stevenson, an employee of the Bureau of Public Roads since 1928, and currently regional right-of-way director for region I, Albany, N.Y. Mr. Stevenson, will you please take the witness stand. Raise your right hand. Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. STEVENSON. Yes, sir.

TESTIMONY OF THOMAS S. STEVENSON, REGIONAL RIGHT-OF-WAY ENGINEER, REGION I, BUREAU OF PUBLIC ROADS, ALBANY, N.Y.

Mr. BLATNIK. Please be seated. Mr. Stevenson, for the record and by way of introduction to the committee, would you give a quick summary of your technical qualifications and your record of experience with the Bureau of Public Roads?

Mr. STEVENSON. Yes, sir. I have been with the Bureau of Public Roads since 1928 and since 1930 I have been in the regional office of region I.

Mr. BLATNIK. Region I includes what States?

Mr. STEVENSON. The six New England States, New York, and New Jersey; and, as of January 1961, Puerto Rico was included in our area.

Mr. BLATNIK. Are you an appraiser by training?

Mr. STEVENSON. No, sir; I am an engineer by training.

Mr. BLATNIK. A civil engineer?

Mr. STEVENSON. I am a civil engineer; yes, sir.

Mr. BLATNIK. All right, Mr. May.

Mr. MAY. You formerly served as regional construction and maintenance engineer, Mr. Stevenson?

Mr. STEVENSON. Yes, sir.

Mr. MAY. And as regional secondary roads engineer?

Mr. STEVENSON. Yes, sir.

Mr. MAY. Mr. Stevenson, could you briefly describe the Bureau of Public Roads right-of-way organization to the subcommittee?

Mr. STEVENSON. The Public Roads organization?

Mr. MAY. Yes.

Mr. STEVENSON. Could I add at this point why I was selected for this particular position, sir?

Mr. MAY. Fine.

Mr. STEVENSON. Well, the decision was made at Bureau headquarters to appoint the regional right-of-way engineers from within the ranks of Bureau personnel in connection with the expansion of the Bureau's right-of-way force following the passage of the 1956 act. These regional right-of-way engineers were to have broad knowledge and experience in Federal operations so as to be of competent character on Bureau procedures with respect to the new right-of-way force being established.

Being a staff officer at our region for many years, I had acquired familiarity with the Bureau's right-of-way policies and procedures, and its objectives from the time the Bureau first entered the right-of-way field following the passage of the Defense Highway Act of 1941.

Mr. MAY. Thank you. Would you describe the Bureau of Public Roads right-of-way organization?

Mr. STEVENSON. Mr. May, do you want this described as of the start of the Public Roads special inquiry in 1960?

Mr. MAY. No; I was thinking of the organization itself. Judge Phillips is the chief of the division?

Mr. STEVENSON. Yes. The Washington office of right-of-way is under the control of the right-of-way division of the Office of Engineering, and Mr. Phillips is the chief of that division. Yes, sir.

Mr. MAY. How would the region handle the right-of-way program?

Mr. STEVENSON. At region level the overall supervision of the program is under the regional engineer who heads the office and for the actual operations of the right-of-way program has a staff officer and has the title of right-of-way engineer.

Mr. MAY. That would be yourself?

Mr. STEVENSON. Yes, sir. Who is responsible for the planning and coordination and promotion of improved practices and the provision of leadership in the administration of all phases of the right-of-way program, and in its related activities. This, of course, includes engineering and coordination and organizational and procedural matters.

Mr. MAY. Do you have some aid within the region to carry out this program?

Mr. STEVENSON. Yes. In our region we had as the principal assistant for the regional right-of-way engineer a regional appraiser

who served as this technical adviser on appraisal and acquisition practices and methods, and the regional appraiser has as a primary duty the coordination of appraisal and acquisition practices and methods in the division offices, and through these offices the same activities in the States.

Mr. MAY. Who was regional appraiser up to August 1961?

Mr. STEVENSON. Arthur F. Libby.

Mr. MAY. When did he become engaged in that function?

Mr. STEVENSON. Mr. Libby joined the Bureau in November 1956 at our regional office for that function.

Mr. MAY. At that time he was assistant to the right-of-way engineer?

Mr. STEVENSON. That is correct.

Mr. MAY. And he left in August 1961?

Mr. STEVENSON. Yes, sir.

Mr. MAY. What happen to him?

Mr. STEVENSON. He was transferred to become a regional right-of-way engineer at our Denver regional office.

Mr. MAY. How is the program carried out in the division, in the States?

Mr. STEVENSON. The division engineer is the head of our division offices. He has the responsibility for exercising general supervision over the Public Roads activities of all kinds within the States.

Mr. MAY. So he becomes a prominent figure in this right-of-way program, does he not?

Mr. STEVENSON. Yes. It is under his responsibility.

Mr. MAY. In Massachusetts who was division engineer up to May 1961?

Mr. STEVENSON. Well, from November of 1957 to May of 1961 it was Mr. Charles E. Hall.

Mr. MAY. Who carried out that function prior to the fall of 1957?

Mr. STEVENSON. The prior regional engineer was John A. Swanson.

Mr. MAY. In what capacity does he now serve?

Mr. STEVENSON. He is now the regional engineer for region I.

Mr. MAY. Where is Mr. Hall?

Mr. STEVENSON. Mr. Hall is division engineer for the District of Columbia.

Mr. MAY. The division engineer within the State has responsibility over the entire program within that State. Is that right?

Mr. STEVENSON. Yes, sir.

Mr. MAY. Does he have some assistance to carry out the right-of-way program in the State?

Mr. STEVENSON. Yes. He has for right-of-way matters a staff officer whom we call a division appraiser and he is responsible for the coordination, planning, and promotion of improvements and review of all phases of the division's right-of-way activities, and he serves as the division's principal contact and liaison man with the State on right-of-way operations.

Mr. MAY. So the division appraiser within the State has the direct and immediate responsibility to see that the program is carried out properly?

Mr. STEVENSON. Yes.

Mr. MAY. And who was the division appraiser in Massachusetts up to June 1960?

Mr. STEVENSON. June 1960?

Mr. MAY. Yes.

Mr. STEVENSON. Arthur T. Bennett. We call him Tom.

Mr. MAY. When did he become division appraiser?

Mr. STEVENSON. May 1957.

Mr. MAY. Who carried out that function prior to Mr. Bennett?

Mr. STEVENSON. It was—coordination of the right-of-way activity from the time of 1956 act up to that time was carried out by one of our area engineers in the division office. Tom or C. C. Sullivan was his name.

Mr. MAY. So actually you had no division appraiser up to May 1957?

Mr. STEVENSON. Yes. We were in the process of recruiting.

Mr. MAY. I think we covered this field, Mr. Stevenson. We talked about the Bureau of Public Roads field supervision and control. That is the way it was set up and that is the way those particular people function. Is that right?

Mr. STEVENSON. Yes.

Mr. MAY. The regional engineer had as an assistant the regional right-of-way engineer who had as an assistant the regional appraiser.

Mr. STEVENSON. No. The regional appraiser served as the assistant to the regional right-of-way engineer.

Mr. MAY. I see. That is right.

Mr. STEVENSON. Yes.

Mr. MAY. So in the State you had the division engineer with total responsibility, but the division appraiser who had direct responsibility for the right-of-way program in the State.

Mr. STEVENSON. That is correct.

Mr. MAY. And the division appraiser would be directly answerable to the division engineer.

Mr. STEVENSON. That is correct.

Mr. MAY. Will you discuss the right-of-way organization within the department of public works in Massachusetts?

Mr. STEVENSON. As a condition to the Federal participation in the costs for right-of-way acquisition, our Bureau of Public Roads policy and procedure memorandum No. 21-4.1, dated December 31, 1956, established a requirement for State schedule of its right-of-way organization policies and procedures, with this to be acceptable to the Federal Highway Administrator.

The Massachusetts—let me first mention that the submission covered 21 separate elements of practice.

Mr. MAY. Let me understand that now. In December 1956 the Bureau of Public Roads asked all of these States to submit to the Bureau of Public Roads a description of their right-of-way organization and that agency's function. Is that right?

Mr. STEVENSON. Yes, sir.

Mr. MAY. And what did the State of Massachusetts have to say?

Mr. STEVENSON. The State of Massachusetts' statement indicated first of all an organization under which it conducted its right-of-way operations. Now the State of Massachusetts had a three-way type of authority, or a three-way exercise of authority in its right-of-way setup.

First of all, I may mention the heads. The authority was divided among the right-of-way division and the secretary of the department of public works, and an associate commissioner. The secretary of the department had the functions of activities incident to notices of taking to property owners, title searching, advancing, the securing of the department's commissions, approval of wards, the instituting of the documents necessary for payments for land, and also, for legal matters, excepting those conducted by the attorney general's office. Routine legal matters that come up in the trial of cases.

For outside fee appraiser assignments and for the control of the fee appraisers and also in liaison with the State's or the department's real estate review board, these were functions performed by an associate commissioner.

Mr. MAY. This will become important, Mr. Stevenson. You mentioned outside fee appraiser assignments and the control of fee appraisers. This function was performed by an associate commissioner of the department of public works?

Mr. STEVENSON. Yes, sir.

Mr. MAY. Is that correct?

Mr. STEVENSON. Yes, sir.

Mr. MAY. Would you just describe what a fee appraiser is?

Mr. STEVENSON. A fee appraiser?

Mr. MAY. Yes, sir.

Mr. STEVENSON. He is a real estate expert judged competent, and who submits his qualifications as a man competent to view property and to examine it and to make an appraisal of its real value, using and following the accepted instructions which the department has made as a requirement for the content of its appraisals.

Mr. MAY. He is normally an expert appraiser who does not work constantly for or within the department of public works. Is that right?

Mr. STEVENS. That's right.

Mr. MAY. But he is an independent outside citizen and he is retained on a fee basis by contract with the department to appraise properties for the department.

Mr. STEVENSON. Well, by agreement of some form.

Mr. MAY. You mentioned real estate review board. Would you just describe briefly what that is.

Mr. STEVENSON. The real estate review board in Massachusetts is a body of five real estate experts who are appointed by the commissioner of the department of public works, and whose function is to review all appraisals in connection with their right-of-way takings and to set a value for the property which we know won't be exceeded in negotiations.

Mr. MAY. You mentioned the secretary of the department carrying out certain functions. You mentioned the associate commissioner carrying out certain functions. There is another breakdown, the right-of-way division.

Mr. STEVENSON. Yes. The right-of-way division headed up by the right-of-way engineer has responsibility for the conduct and control of all other functions except that layout plans—which is a term Massachusetts uses—or right-of-way maps—except for those that are developed by the design engineering section of the department, utilizing

certain data with which they have been supplied by the right-of-way division as to title, or as to property lines, and ownership of property.

Mr. MAY. There is another function—the attorney general's office.

Mr. STEVENSON. Yes. The attorney general's office represents the department in all of its legal matters other than title conveyance and title search. The attorney general conducts all damage cases entering the court process for settlement.

Mr. MAY. We have been talking now about what the department of public works in Massachusetts told the Bureau of Public Roads back in 1956 and 1957 with respect to its organization. Is that right?

Mr. STEVENSON. Yes.

Mr. MAY. What did the department have to say with respect to appraisals?

Mr. STEVENSON. In the submission of their policies and procedures as was requested by the Federal Highway Administrator on appraisals the right-of-way division makes a staff appraisal of all properties affected by the highway layout, where the value of any taking is over \$2,500; and in cases involving substantial amounts of damage as well as in cases that are tried in courts, one or more fee appraisals are taken.

Mr. MAY. So according to the practice in Massachusetts, when it came to taking property the department would always assign a departmental appraiser to make an appraisal?

Mr. STEVENSON. Yes, sir.

Mr. MAY. If the value of the taking appeared to be in excess of \$2,500, the department would also assign at least one outside fee appraiser also to make an appraisal of that property?

Mr. STEVENSON. Yes.

Mr. MAY. What did the department have to say with respect to its staff appraisals?

Mr. STEVENSON. They are made by regular employees required to be familiar with engineering plans, and have a background of real estate experience, or have been instructed and trained in appraisal work by qualified employees.

Mr. MAY. That might bear repeating. The department said that the staff appraisals are made by regular employees required to be familiar with engineering plans and having a background of real estate experience, or having been instructed or trained in appraisal work by qualified employees. Right?

Mr. STEVENSON. Yes.

Mr. MAY. Did the department mention how these staff appraisals would be made?

Mr. STEVENSON. Yes. Staff appraisals are made on a prescribed form incorporating description of property and the elements pertinent to recording how the value is determined. Staff appraisals are signed by the individual making the appraisal and also by the supervisor who reviews and approves them.

Mr. MAY. The State said that the appraisal will be made by the department appraiser and reviewed and approved by some superior within the department?

Mr. STEVENSON. That is correct.

Mr. MAY. What did the department have to say with respect to these outside fee appraisers?

MR. STEVENSON. The outside fee appraisers are required to be real estate men who have training and experience to qualify them to make narrative type appraisals and to testify in court.

MR. MAY. That bears repeating. The department stated that outside fee appraisers are required to be real estate men whose training and experience qualify them to make narrative type appraisals and to testify in court.

MR. STEVENSON. Yes.

MR. MAY. What sort of reports were these outside appraisers required to submit?

MR. STEVENSON. A narrative appraisal report, describing the property before the taking; the damage occasioned by the taking; the neighborhood, and all the other pertinent information concerning the property appraised, and setting the appraised value.

MR. MAY. Did the department mention how the fee appraisers would be engaged?

MR. STEVENSON. How they would be engaged?

MR. MAY. Yes. The mechanics of engaging them.

MR. STEVENSON. Yes. Outside fee appraisers were engaged by an associate commissioner with this being sent by a form letter used for this purpose, including the statement of the information that the department requires in the appraisal reports; and the outside fee appraisals are signed by the persons making them.

MR. MAY. So the department stated that when the fee appraiser was engaged in connection with his mechanical engagement, the department would send to that fee appraiser a statement of the information that the department required the appraisal for.

MR. STEVENSON. That was incorporated in the letter engaging him. Yes, sir. As part of the letter.

MR. MAY. What did the department have to say with respect to negotiation with the property owner?

MR. STEVENSON. Negotiations are conducted by employees of the right-of-way division and by persons other than those making the appraisals.

MR. MAY. So the same person making the appraisal would not be permitted to negotiate with that property owner?

MR. STEVENSON. That is correct.

MR. MAY. Did the department mention the qualifications which the negotiator must have?

MR. STEVENSON. The negotiator must have a knowledge of highway plans and cross-sections; have engaged in the real estate business, or have been trained by the right-of-way division to the stage that the employee has demonstrated to the satisfaction of a supervisor that he is capable of performing the work.

MR. MAY. So the department said that the negotiations would have experience or training.

MR. STEVENSON. That is correct.

MR. MAY. Negotiators would all be State employees working for the department of public works.

MR. STEVENSON. Yes, sir.

MR. MAY. So we clearly understand it, the department negotiator would be allowed to negotiate with the property owner on takings up to \$2,500, without the matter being submitted to the real estate review board. Is that correct?

Mr. STEVENSON. That is correct.

Mr. JONES. May I ask a question at this point?

Mr. BLATNIK. Mr. Jones.

Mr. JONES. Mr. Stevenson, do I understand that this whole State arrangement was promulgated by the State of Massachusetts after a directive of the Bureau of Public Roads in 1956?

Mr. STEVENSON. No, sir. The State had this procedure in existence at that time.

Mr. JONES. Did the Bureau of Public Roads at any time during this period in which you are testifying make an examination to determine whether there was compliance in every respect by the State administration?

Mr. STEVENSON. We had, as a duty of our division appraiser, the job of continually watching and checking on the State's actions with respect to compliance as it concerned compliance with these accepted policies and procedures.

Mr. JONES. Did it go into the proposition as to whether or not the personnel selected by the State board was competent in every respect, satisfying the directive of the Bureau of Public Roads?

Mr. STEVENSON. We only examined these matters on a selective basis. We were not staffed to do it on the whole.

Mr. JONES. Thank you, sir.

Mr. MAY. Mr. Stevenson, you mentioned that the department negotiator was permitted to negotiate with the property owner up to \$2,500.

Mr. STEVENSON. That is correct.

Mr. MAY. Without the matter being submitted to the real estate review board.

Mr. STEVENSON. That is correct.

Mr. MAY. If the value of the property appeared to be greater than \$2,500, then the matter was submitted to the real estate review board and they were required to establish a maximum figure up to which the department would then negotiate. Is that right?

Mr. STEVENSON. The department could not exceed that figure in negotiation. I might mention the staff appraisal values and fee appraisals obtained in connection with any one taking were referred to the review board.

Mr. MAY. What did the department have to say with respect to court cases?

Mr. STEVENSON. When settlement by negotiation cannot be made, a property owner may petition the superior court for assessment of damages. With the filing of this petition the case is then taken over by the attorney general's office, and at this time the department of public works furnishes the attorney general with its pertinent information and its appraisals, both fee appraisals and staff appraisals, and that is followed by the attorney general undertaking the actions necessary in the court process to determine a settlement.

Mr. JONES. Mr. Stevenson, you say assessed damages.

Mr. STEVENSON. That is a term—

Mr. JONES. Do you mean the value of the property?

Mr. STEVENSON. That is a term as used in the Massachusetts—I am quoting their own language—to determine the total value of the land and buildings plus severance damages, or other types of damages that may be involved in the taking.

Mr. JONES. Thank you.

Mr. CRAMER. May I ask a question?

Mr. BLATNIK. Mr. Cramer

Mr. CRAMER. Do I understand in instances where the negotiator is not able to come to an agreed figure with the property owner, at a figure that I understand has to be less than what the Review Board sets as the maximum that can be paid—

Mr. STEVENSON. It may be the same. It may not be exceeded.

Mr. CRAMER. The same or less?

Mr. STEVENSON. Yes.

Mr. CRAMER. Then those negotiations failed and the way in which it is further implemented is, if the property owner files a petition with the superior court.

Mr. STEVENSON. That was the procedure as presented to us. Yes, sir.

Mr. CRAMER. And then the entire matter becomes the responsibility of the attorney general. Is that right?

Mr. STEVENSON. Yes.

Mr. CRAMER. Under the Massachusetts law?

Mr. STEVENSON. Yes.

Mr. CRAMER. And that, of course, includes any question of settlement, or condemnation, or final judgment, or what have you, and it is the attorney general's responsibility.

Mr. STEVENSON. Yes, sir. From that point on.

Mr. MAY. So we have been discussing what the Department of Public Works of Massachusetts told the Bureau of Public Roads back in 1957.

Mr. STEVENSON. That's right.

Mr. MAY. About its organization and the way the organization functions.

Mr. STEVENSON. Yes, sir.

Mr. MAY. This statement was accepted by the Bureau of Public Roads.

Mr. STEVENSON. Yes, sir, and accepted by the Federal Highway Administrator.

Mr. MAY. Then it was considered Massachusetts was one of those States which qualified to participate in the program?

Mr. STEVENSON. Yes, sir.

Mr. MAY. This looked good on paper?

Mr. STEVENSON. Yes.

Mr. MAY. Maybe it would be helpful at this point, Mr. Stevenson, if you would just briefly give to the committee the step-by-step process which results in the property being taken from the property owner, and compensation being given to him.

Mr. STEVENSON. Yes, sir. The first step is with the project being selected from their advertising lists, or from their active project lists. That is the time that the right-of-way division first enters the project to begin to collect preliminary data for the development of right-of-way plans, and their later documents. The right-of-way division in this connection checks the records of the county register and information from the assessor's office and interviews the owners of the property. It is in this manner that title information and property lines and other miscellaneous information with respect to the property, and preliminary estimates of its value are ascertained and this data becomes the

basis for the preparation of the so-called report in Massachusetts which lists each parcel and its ownership.

The layout report is then furnished to the design section of the department which then completes a layout plan, which term means in most other States the right-of-way map. An order of taking is the legal instrument by which they actually acquire the land by filing it with the county registry. The layout plan and order of taking are then forwarded to the board of commissioners, which consist of the commissioner and two associate commissioners, for the affixing of their signatures.

With this action the commissioners—with this action there is established a legal date of the taking order and affixing of the signatures of the commissioners. The department then files the layout plan and order of taking in the registry of the county in which the property to be taken is located as well as with the county commissioner's office and the office of the town clerk or city clerk, depending on whether it is a town or a city. The filing of these documents must take place within 30 days of the date the commissioners affix their signatures under State statutes.

It is with the recording of this order of taking that the title of the lands pass to the State.

MR. MAY. That becomes important, Mr. Stevenson.

MR. STEVENSON. Yes.

MR. MAY. As soon as the State files the layout plan, the State owns the property.

MR. STEVENSON. I would say it is filed and recorded. The recorded action has to take place.

MR. CRAMER. At that point, the only record available on value is the staff appraisal. Is that right?

MR. STEVENSON. No. No appraisals at this point have necessarily been made.

MR. CRAMER. There is no idea?

MR. STEVENSON. Nothing in the way of firm appraisals. We have had the sealed examination prior to that time.

MR. CRAMER. Isn't there a line appraisal made to estimate the cost of the property?

MR. STEVENSON. Yes. A preliminary estimate but not to firmly appraise the property.

MR. CRAMER. That is what I am talking about. In order to determine how much this project is going to cost and how much the State and Federal matching funds will be that will be involved, so it can be programmed even before this, when it is taken before the commissioners, they have to make a line appraisal, do they not?

MR. STEVENSON. Yes. We call that a preliminary estimate of value. That has been done.

MR. CRAMER. And that is made by State employees?

MR. STEVENSON. Yes. And that data actually becomes the basis for the development of the right-of-way estimate for costs for internal budgetary uses, and so forth.

MR. MAY. Will you continue, Mr. Stevenson?

MR. STEVENSON. The State statutes further require the department of public works to effect an order of entry. This is accomplished by performance of an act of construction by a member of the State's forces on any one of the parcels involved in an entire layout. Certi-

fication of this action is required by statute to be filed in the related county registry by the department's secretary's office must take place within 2 years of the signing of the order of taking. The official date of entry thus established is the date upon which the State becomes legally obliged, or legally obligated to pay the property owner and pay for the property taken. The property owners are officially notified of the State's taking of their property by registered mail forwarded to them by the department's secretary's office.

Mr. MAY. When does that happen?

Mr. STEVENSON. That can happen at any time after the Commissioners have affixed their signatures and they have effected and gone through the process of starting the report.

Mr. MAY. This is something which would be normally expected to be done promptly?

Mr. STEVENSON. Yes; yes. If it depends on the urgency of getting construction on it, that would be a factor in it. It would normally be expected if you are going to expect to start construction soon. Yes.

Mr. MAY. You might as well notify the property owner as soon as you can. Is that right?

Mr. STEVENSON. Yes.

Mr. CRAMER. Then what figure is the State obligated to pay the owner at that point?

Mr. STEVENSON. None at that time. Fee appraisals may have been started in between that, but at that time they may not have been necessarily complete, or the firm appraisal process is not.

Mr. MAY. This note will simply tell the property owner, "We have taken the property, and we now own your property."

Mr. STEVENSON. Yes.

Mr. MAY. Does it say anything about money and that you will get the money later?

Mr. STEVENSON. That is correct. The law provides he shall receive compensation for his property later on.

Mr. CRAMER. The only thing in the file at that point is the line appraisal, or the line estimated value?

Mr. STEVENSON. Yes; that's right—on record. The appraisal process may well be in process for determining firm value.

Mr. MAY. It may not be necessarily true.

Mr. STEVENSON. Yes.

Mr. MAY. You might have a situation where even fee appraisals have been made.

Mr. STEVENSON. Yes.

Mr. MAY. And you might have some idea of true value.

Mr. STEVENSON. Yes.

Mr. MAY. But it isn't important at that point. Is that correct?

Mr. STEVENSON. Right.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Did I understand you correctly, to summarize your findings with respect to Massachusetts by saying that your inquiries into the controls exercised by the State gave you no reason to suspect that there was anything going wrong, let us say, in 1957 and 1958?

Mr. STEVENSON. Well, from the time I took over as regional right-of-way engineer in 1958; no, sir. Our inquiries, the inquiries of our people, and no information had come to me then.

Mr. WRIGHT. Superficially at least, from the standards that had been submitted to you by the State department of public works, it appeared that they were undertaking a good program and that adequate controls to screen out irregularities existed. Is that correct?

Mr. STEVENSON. I would say yes. They were following accepted policies and procedures. Yes.

Mr. WRIGHT. Their system required a review of any appraisal above \$2,500, I believe you said?

Mr. STEVENSON. I would say all appraisals. It required a review of staff appraisals but they only obtained fee appraisals for values over \$2,500.

Mr. WRIGHT. Those \$2,500 takings were settled by representatives of the right-of-way department within the State. Is that correct?

Mr. STEVENSON. That is correct.

Mr. WRIGHT. Your inspection of their program and their set of controls proceeded, therefore, necessarily on the assumption that fee appraisers and negotiators employed by the State were both competent and honest?

Mr. STEVENSON. In accordance with the procedures submitted to us. Yes.

Mr. WRIGHT. You had no reason at that time to suspect that they were incompetent or dishonest. Is that correct?

Mr. STEVENSON. No; I did not. Our division appraisers' duty was to spot check, or to make a selective examination of these practices in that regard.

Mr. WRIGHT. Do you have people with the Bureau of Public Roads in your right-of-way department or division whose job and requirement it is to go out on a spot basis and look at the property on the ground?

Mr. STEVENSON. Yes, sir.

Mr. WRIGHT. Were they doing that in this case?

Mr. STEVENSON. They were doing this as much as he could get to it as a part of his spot checking.

Mr. WRIGHT. Of course, he couldn't look at all of the takings, but at that time you were not unearthing anything that looked bad?

Mr. STEVENSON. No. We expected him to have familiarity, of course, on these matters.

Mr. WRIGHT. May I ask you at what point in time did the Bureau of Public Roads first turn up a suspicion that all was not right in Massachusetts?

Mr. STEVENSON. It was just shortly after the middle of November 1959 that I believe we had our first indication of things not being what they should be.

Mr. WRIGHT. And at that point the interstate highway program had been going 3 years, and, of course, the regular Federal-aid program had been going quite a long while—since 1944. Is it a fair summation to say that your job essentially is to inspect the standards and findings that are submitted by the State, and to assume that the individuals appointed by the State to carry out this program are competent and honest people?

Mr. STEVENSON. Not to assume, but to—we couldn't take action to say that they are not qualified until we actually examined it.

Mr. WRIGHT. I remember some testimony that was given by a representative of the Bureau of Public Roads in the Oklahoma hearing in which he engaged in a slightly different activity than your own respecting a section of actual contract performance in the construction of the road. He expressed some amazement that what was actually happening had been occurring under his nose. Subsequent to that hearing and the information it disclosed, we adduced some testimony in the New Mexico hearing which reflected that the Bureau of Public Roads had tightened up its inspection procedures and probably was responsible later for stopping other things of that type from happening. Do you think that the Bureau of Public Roads needs a little more inspection, let us say, in the field where land takings are going on?

Mr. STEVENSON. I will say we have done two things in that regard. We have certainly tightened up in our region on our inspection procedures and our documentation. However, there is a limit to which you can go with the personnel that you have. The lack of personnel has been mentioned before here this morning.

Mr. WRIGHT. Yes. How many people would you have available to the Bureau of Public Roads in your region, which includes six New England States, New York, New Jersey, and Puerto Rico, or a total of nine areas consisting of eight States and Puerto Rico? How many people would you have available to go out and conduct actual field reviews of properties that might appear improperly valued?

Mr. STEVENSON. I would say the men in each of our appraisal force in each State are expected as a part of their duties to go out and look at these properties.

Mr. WRIGHT. How many people are on the appraisal force in each State?

Mr. STEVENSON. You say in each State?

Mr. WRIGHT. Yes. It would vary?

Mr. STEVENSON. Yes.

Mr. WRIGHT. And in a State the size of Massachusetts?

Mr. STEVENSON. In a State the size of Massachusetts we have at the present time five allocated with four of the positions filled.

Mr. WRIGHT. How many did you have in 1958?

Mr. STEVENSON. We only had one.

Mr. WRIGHT. When you assumed this responsibility?

Mr. STEVENSON. Just one.

Mr. WRIGHT. And now you have five?

Mr. STEVENSON. Yes. That is dependent on that number for the special problems we are having there.

Mr. WRIGHT. Four actually working, and you have a place available for five?

Mr. STEVENSON. Yes, sir.

Mr. WRIGHT. Thank you.

Mr. ROBISON. Mr. Chairman.

Mr. BLATNIK. Mr. Robison.

Mr. ROBISON. Mr. Stevenson, back when you had only one appraiser in Massachusetts on this selection, review, or spot checking, how many cases would that be, if you can make an educated guess, out of the various takings? Would it be 1 out of a hundred, or 1 out of 500?

Mr. STEVENSON. Oh, I cannot recall the number of cases our divi-

sion appraiser did. I would say it would be on the order of something about 5 or 10 percent is all that he could do.

Mr. MAY. We can recall even better than that. We have statistics for one of the pertinent years, and it appears that your Division appraiser reviewed 2 percent or less.

Mr. STEVENSON. Two percent?

Mr. CRAMER. What year was that, and how many projects were involved? Can the staff indicate?

Mr. MAY. These were simply estimates for part of the people involved. It is estimated some 6,000 appraisals would be had in a given year, and we have statistics showing that Mr. Bennett, the Division appraiser in 1959, reviewed 273 appraisals.

Mr. CRAMER. Out of 6,000. Is that right?

Mr. MAY. 6,000 is only an estimate.

Mr. BALDWIN. Then that would be 5 percent instead of 2 percent, if the gentleman will yield.

Mr. MAY. Even that has to be qualified in this respect: In 1959, in November, the Bureau of Public Roads was alerted to receive an allegation that improprieties were occurring.

Mr. BALDWIN. My comment is only on the arithmetic, Mr. May.

Mr. BLATNIK. It is approximately 5 percent.

Mr. MAY. No; 6,000. Three percent would be 200. It is 273.

Mr. BALDWIN. Three percent of 6,000 is 180.

Mr. CRAMER. Five percent would be 300, wouldn't it?

Mr. MAY. I have to point out in November Mr. Bennett reviewed 47 appraisals and in December of 1959, after the allegations were received, he reviewed 63. Prior to that we have these figures which are, July 24, August 19, September 16, and October 13.

Mr. ROBISON. One more question. I think I still have the floor.

Mr. BLATNIK. Mr. Robison.

Mr. ROBISON. Before the arithmetic lesson got in here, did I understand you to say that in these reviews there was also field work done by your appraiser? In other words, did he just review in these instances paperwork, or go out in the field and look at the property?

Mr. STEVENSON. Let me first preface this: One of his first duties at the time of the institution of a right-of-way project is to review this entire project along with the engineers. In that way he would get a familiarity with the line and general character of the neighborhood. It was up to his judgment when he made review appraisals as to what extent he should again go into the field to refamiliarize himself with that particular taking. We left that to his judgment to determine what he should do in connection with any particular value problem.

Mr. ROBISON. All right.

Mr. MAY. I would like to talk now about the Bureau of Public Roads requirements, Mr. Stevenson, as far as review and appraisal is concerned.

Mr. STEVENSON. Yes.

Mr. MAY. Do I understand there has always been a requirement of the Bureau of Public Roads that the State obtain sound appraisals?

Mr. STEVENSON. It has to.

Mr. MAY. And it has always been the requirement of the Bureau of Public Roads that the State have someone within the department who would review and approve the appraisal?

Mr. STEVENSON. That is correct. Yes. A person of supervisory competence and level.

Mr. MAY. In July of 1958 the Federal Highway Administrator issued a circular memorandum to regional and division engineers within the Bureau.

Mr. STEVENSON. With respect to the review of appraisals, yes. The establishment of review appraiser positions.

Mr. MAY. That is considered a policy statement by the Administrator.

Mr. STEVENSON. It is, sir.

Mr. MAY. Which means what?

Mr. STEVENSON. It means we are in the field and we in the field are obliged to follow it and to enforce it as a part of our general operating procedures.

Mr. MAY. Isn't this also simply permissive on the part of the State?

Mr. STEVENSON. That particular policy issue was permissive in its application. Yes, sir.

Mr. CRAMER. I don't quite understand. Does this memorandum apply to review of appraisals by the Bureau or State?

Mr. STEVENSON. It was one that had the effect of authorizing within a State the establishment of a review appraiser position to make determinations of value on properties, taking into account the appraisals themselves, plus other pertinent information of value that had bearing on the case.

Mr. JONES. That was the purely procedural item, was it not?

Mr. STEVENSON. Yes. It authorized any State to establish that position. However, as Mr. May just stated, we have always had the requirement that appraisals be approved by supervisors competent to give approval to appraisals. Yes.

Mr. MAY. To save time, I would like to read the pertinent parts of that policy statement. You correct me if I am wrong, Mr. Stevenson.

It reads in part, and I quote:

I. ESTABLISHMENT OF FAIR CASH MARKET VALUE

Within each State highway department, one or more individuals, hereinafter referred to as reviewing appraisers, are delegated authority to determine the fair cash market value of real property, which amount is to govern negotiations and settlements. In making such a determination, the reviewing appraiser may consider all competent information of value that is available, including appraisals secured by the State highway department and the property owner, recent awards by condemnation juries for similar property in the same area, and any other pertinent value information that is relevant to his determination. The reviewing appraiser, on the basis of additional value information available to him, may adjust the determination as to the fair cash market value at any time prior to settlement.

II. DOCUMENTATION AND SUPPORT

Federal funds may participate in the full amount of settlements otherwise acceptable if documented and supported as described below:

(a) If the reviewing appraiser finds that the State's appraisals are competent and accurate measures of fair cash market value, he should so indicate by placing his signature on such appraisals. In this case no further documentation or support is required to justify full payment of the Federal share of settlements not substantially outside the range of such appraisals.

(b) If the reviewing appraiser determines that the fair cash market value is substantially outside the range of the State's appraisals, he should in-

clude in the State's files a signed statement setting forth his determination of the fair cash market value and an explanation of the basis therefor. This statement will be accepted as justification for full payment of the Federal share of settlements that do not differ substantially from the value set forth in such statement.

The meaning of all that, Mr. Stevenson, is that if the State did these things, then the Bureau auditor was not bound to go behind those statements if everything appeared reasonable on the surface. Is that right?

Mr. STEVENSON. Well, if our procedures and examinations of these general processes indicated a good measure, or complete measure of reliability.

Mr. MAY. Yes.

Mr. STEVENSON. I wouldn't say we would look behind these determinations that might go beyond an appraisal itself. Frequently appraisals do omit pertinent items of value and this provides a means of assuring the States that we would recognize those additional elements of value through this process.

I certainly don't want to give the impression that we won't go behind these determinations. We have looked for good, sound reasoning and logic as a basis for honoring any such determinations.

Mr. CRAMER. For you to go behind it there would have to be something that appeared fraudulent on the face of it, wouldn't there?

Mr. STEVENSON. I wouldn't say fraudulent, sir. I would say the explanations would have to be so careless as to be meaningless. It would have to be a solid reason.

Mr. CRAMER. Some irregularity would have to be apparent to direct your attention to that particular case, and for you to find out why it is a weak appraisal.

Mr. STEVENSON. Our auditors would look at this justification to see it did make sense and gave a reason that a reasonable man would expect to find as justification, and if he were not satisfied with it he wouldn't sign.

Mr. CRAMER. When these 6,000 cases were signed, in those instances there would be sometimes as many as three or four appraisals to be reviewed in each instance. Is that right?

Mr. STEVENSON. Sometimes three. It was not—rarely ever would we have as many as four.

Mr. CRAMER. That would mean 16,000 possible appraisal reports that you had to review.

Mr. STEVENSON. Oh, no, sir. No, sir. I think there is some misunderstanding. He was talking about the number of appraisals on all parcels.

Mr. CRAMER. How many parcels were there?

Mr. STEVENSON. The estimates of the workload furnished to us in early 1958 were that we would have about 3,000 parcels expected to be taken from May 1958 to May 1959.

Mr. CRAMER. Federal-aid projects?

Mr. STEVENSON. Involving all Federal-aid projects, interstate and primary and urban programs.

Mr. CRAMER. And having an average of three appraisals in each one—an average?

Mr. STEVENSON. No. Not necessarily. I wouldn't say it would average three.

Mr. CRAMER. What would the average be? You say in your reference there would be about 6,000 appraisals involved.

Mr. STEVENSON. No; I didn't say that. Mr. May gave that information. I do not know myself. He got this information last year and not from me.

Mr. WRIGHT. Could we get the same information perhaps by inquiring what would be the total number of land takings in such a year in Massachusetts?

Mr. STEVENSON. About 3,000.

Mr. WRIGHT. About 3,000 separate parcels of land?

Mr. STEVENSON. That was the division report to our regional office at that time.

Mr. WRIGHT. So at the time you had a review appraiser, one representative of the Bureau of Public Roads, charged with the responsibility of reviewing that appraisal work in that State, there were 3,000 in a year. In order to achieve a 10-percent review, he would have to review 300, which would be about 1 every working day. If he were to undertake to review 20 percent he would have to review two in a working day. Did he have other responsibilities in addition to that?

Mr. STEVENSON. He had responsibility, yes, to serve all phases of the right-of-way program, yes, sir, besides appraisals.

Mr. WRIGHT. His responsibility, however, was confined to the right-of-way program?

Mr. STEVENSON. Oh, yes, it was confined to the right-of-way program, although he might be given additional assignments in a rare situation with other pressing manpower situations, to do odd jobs.

Mr. WRIGHT. You mentioned a moment ago that at the present time we have five positions in the State of Massachusetts where previously there was one. Is this representative of the whole program throughout the country or within your region? Have such increases in this activity occurred in all the States with which you have familiarity, or have they occurred only in Massachusetts?

Mr. STEVENSON. I don't quite understand, "such increases in activity."

Mr. WRIGHT. Let me rephrase my question. You have increased the force in right-of-way inspection and reviewing from one man in 1958 for the State of Massachusetts to five men today. Have you done similarly in other States?

Mr. STEVENSON. No, sir.

Mr. WRIGHT. So that in other States you still have perhaps one man?

Mr. STEVENSON. In some of the States we do, but we do not have this special problem to deal with as we now have in Massachusetts.

Mr. WRIGHT. I can understand that. You are saying, in other words, that the reason we now have five men in Massachusetts is because we learned, beginning in 1959, that there were gross irregularities taking place in the State of Massachusetts.

Mr. STEVENSON. There were indications of it at that time; yes, sir.

Mr. WRIGHT. This is the reason you have strengthened and expanded the force in that State?

Mr. STEVENSON. Well, it was accomplished after that time. However, with that estimate that was submitted in 1958, we then made requests to get assignment of another appraiser to the force.

Mr. WRIGHT. Before you knew of this situation?

Mr. STEVENSON. Oh, yes. We recognized that as being a much heavier load.

Mr. WRIGHT. So that throughout the country you have not expanded the work force five times what it was in 1958?

Mr. STEVENSON. I have no information of what is in the country. I am a regional officer and I do not—

Mr. WRIGHT. Then your information would be confined to your region, consisting of eight States and Puerto Rico?

Mr. STEVENSON. Yes, sir.

Mr. WRIGHT. And in those other eight States have you increased the working force in this particular field?

Mr. STEVENSON. From that time in 1958?

Mr. WRIGHT. Yes.

Mr. STEVENSON. Yes. We have added a man to New Jersey and we have recently added a man in New York. Of course that is very recently. And another in Connecticut.

Mr. WRIGHT. How many altogether have you in the State of New York?

Mr. STEVENSON. At the present time we have two. We have an allocation for a third. It is in process of being filled.

Mr. WRIGHT. If there were 3,000 land takings in Massachusetts in a representative year, how many would there likely be in the State of New York?

Mr. STEVENSON. New York would run up to between 3,500 and 4,000 as far as fee is concerned. New York only claims Federal participation in the right-of-way takings of the interstate program.

Mr. WRIGHT. So you had one man and you now have two men?

Mr. STEVENSON. Where, now?

Mr. WRIGHT. In New York.

Mr. STEVENSON. We have had two before. We have had two in New York going back to—

Mr. WRIGHT. It is a fairly standard arrangement?

Mr. STEVENSON. Yes.

Mr. WRIGHT. But prior to 1959, when you had one man in Massachusetts you had no indication that there was any general irregularity there, and it is altogether possible in some of these other States that at the present time similar things may be escaping the screening mechanism set up by the Bureau of Public Roads. Is that correct?

Mr. STEVENSON. Well, I couldn't categorically say no there, but we don't believe so, because we have stepped up our control procedures quite a bit.

Mr. WRIGHT. Have you noted a marked improvement in the procedures employed by the States with respect to right-of-way acquisition in the last 2 or 3 years?

Mr. STEVENSON. Yes. Very substantial improvements have been made since 1956 except in Massachusetts up to the time of the inquiry.

Mr. SCHERER. You mean except Massachusetts?

Mr. STEVENSON. Yes. We were not able to get improvements. No improvements were accomplished in Massachusetts of any material character.

Mr. BLATNIK. What is the reason for that exception?

Mr. STEVENSON. They had basically a good, sound, operating procedure to start with. They had very good appraisal instructions. They really did.

Mr. CRAMER. Appraisal instructions?

Mr. STEVENSON. I mean, instructions for the preparation of the appraisal.

Mr. CRAMER. What do you mean by that?

Mr. STEVENSON. For the use of the people making appraisals. They had good instructions that would provide well-informed appraisers a basis for determining values.

Mr. CRAMER. In other words, the criteria set out by the State for determining value by appraisers was satisfactory, in your opinion?

Mr. STEVENSON. Yes. From all of the States in our region I would say at that time that Massachusetts had the best in the way of instructions.

Mr. CRAMER. But they are not any good if they are not followed. Is that right?

Mr. STEVENSON. That is correct.

Mr. SCHERER. They were not followed in Massachusetts, were they?

Mr. STEVENSON. Later disclosures have indicated they were not.

Mr. CRAMER. What do you mean, "later disclosures"?

Mr. STEVENSON. As a part of the inquiry.

Mr. CRAMER. Are you talking about the Beasley & Beasley report or the Bureau's—

Mr. STEVENSON. I am not familiar with the Beasley report, but our activities in connection with the difficulties have indicated that.

Mr. SCHERER. Witness, you indicated it was the Bureau in 1959 that first discovered irregularities in Massachusetts, did you not?

Mr. STEVENSON. That was the first time we had any—

Mr. SCHERER. And as a result of that discovery and investigation, the Bureau employed the services of Beasley & Beasley specifically to substantiate their suspicions in the preliminary findings, did they not?

Mr. STEVENSON. The Bureau did.

Mr. SCHERER. Did it not?

Mr. STEVENSON. Yes, sir.

Mr. SCHERER. And then the Bureau referred to findings of Beasley & Beasley, together with its own findings as a result of extensive investigation, to the prosecuting authorities both at the Federal and State levels in Massachusetts, did it not?

Mr. STEVENSON. I was not the one who did it.

Mr. SCHERER. I didn't say you did it, but you know that happened. Is that right?

Mr. STEVENSON. Yes.

Mr. SCHERER. And there have been some grand jury investigations as a result of those findings of the Bureau?

Mr. STEVENSON. Yes.

Mr. SCHERER. Is that right?

Mr. STEVENSON. Yes, sir.

Mr. SCHERER. And there have been some prosecutions?

Mr. STEVENSON. Yes, sir.

Mr. BALDWIN. Will the gentleman yield?

Mr. SCHERER. Yes.

Mr. BALDWIN. Do I understand that you say personally you are not familiar with the Beasley & Beasley report?

Mr. STEVENSON. That is correct.

Mr. BALDWIN. I am rather astonished at that. If the Bureau employed Beasley & Beasley to find out what was wrong in Massachusetts and the report was filed by them, and you are the regional right-of-way engineer there, why didn't you find out what was in the report?

Mr. STEVENSON. The engagement of Beasley & Beasley has been undertaken as a part of our Project Examination Division's inquiry into the right-of-way matters, and I have had no direct knowledge of that, sir.

Mr. CRAMER. Will the gentleman yield? Did you have anything to do with the finding of the initial irregularities that resulted in Beasley & Beasley being employed? It is under your direction, is that true? You are director of Massachusetts as part of your region?

Mr. STEVENSON. Massachusetts is part of my region.

Mr. CRAMER. Yes.

Mr. STEVENSON. It was the initial report of our regional appraiser who, on a visit there in November, received information that indicated things were not as they should be, and he made a report of it, and we acted at that time to get corrective measures started.

Mr. BALDWIN. November of what year?

Mr. STEVENSON. November of 1959.

Mr. BALDWIN. Who is this regional assistant?

Mr. STEVENSON. Arthur F. Libby.

Mr. BALDWIN. He was under your direction?

Mr. STEVENSON. Yes.

Mr. BALDWIN. What were the natures of the irregularities he found at that time or suspected?

Mr. STEVENSON. That appraisers were being engaged and were not furnishing competent reports—competent or reliable appraisal reports.

Mr. SCHERER. You said just a few minutes ago that Massachusetts had at the beginning of this program perhaps the best procedures of almost any State you know of or knew of. Is that right?

Mr. STEVENSON. I said insofar as appraisal instructions were concerned for the preparation of their appraisal reports.

Mr. SCHERER. It is evident from what you know has now happened in Massachusetts, that procedures and instructions mean nothing when people participating in these matters do not act in good faith?

Mr. STEVENSON. Yes, sir.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Stevenson, the reviewing appraisers' function will become most important as these hearings progress. Would you give to the subcommittee the Bureau's concept of the reviewing appraiser's function?

Mr. STEVENSON. The Bureau has long recognized the need for someone to review and correlate appraisals made by State employees and outside fee appraisers.

Mr. JONES. Mr. Stevenson, are you speaking of someone in the Bureau of Public Roads that makes that examination, or—

Mr. STEVENSON. No, sir. Within the State. Our policy and procedure memorandum issued in December 31, 1956, No. 21-4.1 provided among other things that, and I quote:

All such appraisals shall be reviewed by a supervisor in the State right-of-way division competent to approve right-of-way appraisals, prior to start of negotiations.

Briefly, in this review process, we expect that a State review appraiser or person reviewing appraisers should review the report itself and analyze it and check for completeness of data and for errors and omissions and basic assumptions, as well as authenticity of data, application of appraisal techniques, correlation, and reasonableness of prime conclusion, and for noncompensable items.

I would like to say further that the Bureau would expect a State to perform this in some way since 1956. We had no specific requirement for the appraisal review process to include a field review, but it was expected persons competent to approve appraisals and to determine figures for negotiations would have acquired field familiarity with the property involved.

Mr. MAY. Thank you.

Mr. CRAMER. Who did this review in Massachusetts?

Mr. STEVENSON. As far as staff appraisals were concerned, a supervisor in the right-of-way division itself. For the fee appraisals we expected that review process to be accomplished by the review board.

Mr. CRAMER. So you had a supervisor within the department to review the individual fee appraisers?

Mr. STEVENSON. No. Just the staff appraisals within the department. The fee appraisals were not reviewed by the right-of-way division. They were referred, as I indicated earlier, to the associate commissioner, and then referred to the review board along with the State staff appraisals.

Mr. CRAMER. So you relied on the review board to review the fee appraisals. Is that right?

Mr. STEVENSON. Yes.

Mr. CRAMER. And you relied on the supervisor within the department to review staff appraisals?

Mr. STEVENSON. That's right, and the review board would also review staff appraisals itself.

Mr. CRAMER. That was the second step you said.

Mr. STEVENSON. Yes.

Mr. CRAMER. And who did you say appointed the members of the review board?

Mr. STEVENSON. The commissioner, from a list of real estate experts furnished to him by some two or three real estate organizations in the State. I don't recall them at the moment but they were from a list of men who were real estate experts and recognized as men of substance in their field.

Mr. CRAMER. By the commissioner, you mean the commissioner of the department of public works?

Mr. STEVENSON. Yes. The commissioner of the department of public works.

Mr. CRAMER. In Massachusetts, which is dissimilar from numerous other States, the department of public works commissioner has jurisdiction over all public works including roads, and not exclusively highways. Is that right?

Mr. STEVENSON. It included things other than highways, like canals. I am not too familiar with all the additional functions other than highways, but it did include more than highways.

Mr. CRAMER. Did the associate commissioners, of which you say there are two, have any jurisdiction? They had no jurisdiction in making these appointments to the review board. Is that right?

Mr. STEVENSON. That is my understanding, sir.

Mr. BLATNIK. Any other question? Mr. May.

Mr. MAY. I would like to sum up. It is most important that the Bureau of Public Roads expected the reviewing appraiser's function would be performed on both the departmental appraisals and fee appraisals. In Massachusetts you were aware that the departmental appraisals were being reviewed by people within the right-of-way division?

Mr. STEVENSON. Yes, sir.

Mr. MAY. When it came to the fee appraisals themselves they were submitted to the real estate review board, and you assumed that they were performing this reviewing appraisal function with respect to the fee appraisals. Is that right?

Mr. STEVENSON. Yes. Plus, of course, they also reviewed the staff appraisal that was referred to along with the fee appraisal.

Mr. MAY. Yes.

Mr. STEVENSON, up to November 1959, were you satisfied that the right-of-way program in Massachusetts was being carried out adequately and in a proper manner by both the Bureau of Public Roads and the Commonwealth of Massachusetts?

Mr. STEVENSON. Yes, sir.

Mr. MAY. The usual checks and controls existing at that time had failed to detect any serious deficiencies. Is that right?

Mr. STEVENSON. That is correct.

Mr. MAY. That will be all, Mr. Stevenson.

Mr. CRAMER. Just a moment. I have one question, if I may, Mr. Stevenson. You indicated that these instructions that were submitted by the Bureau as one of the regulations, required that any appraiser appointed, any fee appraiser appointed by the State, would be required to qualify to testify in court. Is that correct?

Mr. STEVENSON. The department submission of their organization and policies and procedures to the Bureau indicated that.

Mr. CRAMER. Did any of your reviews indicate that this was not being conformed to?

Mr. STEVENSON. Our reports from our division appraiser indicated nothing that was irregular in that regard, sir.

Mr. WRIGHT. This was at what time?

Mr. STEVENSON. This is going back to the time before we are aware of it.

Mr. WRIGHT. Since then you have had indications that there have been irregularities. Is that correct?

Mr. STEVENSON. The information I received from the man who heads up our special inquiry indicated such. Yes, sir.

Mr. WRIGHT. Thank you.

Mr. CRAMER. Who indicated that?

Mr. STEVENSON. The man, Mr. O'Connor, who is heading up our special inquiry in Massachusetts.

Mr. CRAMER. I assume he will be called as a witness. The reason why I ask is because we requested it some time ago, but we still do not have a list of who is or is not going to appear, except on this daily basis. So if, from time to time, it necessitates my asking, I trust the Chair and the staff will be willing to advise. It would be much easier if the minority had a list of witnesses and maybe could avoid a lot of these questions as we go along.

Mr. BLATNIK. We would avoid a lot of questions, but I assure the committee for the record that all the facts available will be presented in time. On the question of what witnesses we will have, it is a problem to list them in advance as it was this morning. We were not certain whether or not we would start off with the General Accounting Office at the beginning with a background. It is all background material on the Federal participation by way of investigation, and directives, and regulations, and so forth. We do make changes. The important thing is that the facts be unfolded as completely as it is possible to, within our competence and availability and justification, in a logical flow of events to build up the case and give us a complete, overall picture. I guarantee you we will have a good picture before we are through.

Mr. CRAMER. I am not suggesting you will not, Mr. Chairman, and with respect to the feelings of the chairman, maybe the minority could make some small contribution toward accomplishing those objectives; but I would suggest without knowing who is going to be called it makes it very difficult because of the information that the majority has that the minority does not.

Mr. JONES. I will not accede to that, Mr. Chairman. The whole group has the same information that the minority has. I don't see that there would be any exception or that the minority is receiving any discourteous treatment in relation to the information.

Mr. GRAY. Mr. Chairman, may I take 1 minute to ask the witness one question?

Mr. STEVENSON, what have you done in the way of increasing your inspection personnel in the New England States, in Vermont, New Hampshire, and Maine, let us say?

Mr. STEVENSON. We have just recently had a staffing estimate developed so far as procedures for the planning for the future are concerned, and studies of that have indicated we do need some additional manpower in all of our regions. It is all encompassing.

Mr. GRAY. The reason why I asked that question is, there has been a considerable amount of newspaper publicity about alleged violations up in Vermont, and I was wondering why in Massachusetts you would increase your inspection personnel by 500 percent, and in these other States in the area where there is no investigation at the moment you haven't increased it. I am wondering about it.

Mr. STEVENSON. The program is much smaller in Vermont, and in that connection the findings so far have not indicated that there were questions of dishonesty or malpractice in the departments.

Mr. SCHERER. In Vermont, you say?

Mr. STEVENSON. Yes.

Mr. SCHERER. You don't know of any highway officials in Vermont that should be in jail then?

Mr. STEVENSON. I know of none. I can only say this State investigation report has as one of their conclusions that they found nothing in the way of dishonesty or improper practices on the part of any of the current State officials.

Mr. GRAY. One thing that occurred to me as one member of this committee is, it seems to be the feeling of the Bureau they should wait until these things are uncovered before they take action. Don't you believe in the old adage an ounce of prevention is worth a pound of

cure, and you should go in and try to discover these things and prevent them from happening, instead of waiting, as in Massachusetts, until it does happen, and then decide to increase your force?

My point is, why not increase your force by 25 or 50 percent, or whatever you can, after you get through the Bureau of the Budget, and try to have a proper inspection of these things rather than waiting till the horse is out of the barn before you close the gate?

Mr. STEVENSON. We would like certainly to get additional forces, sir. I think we have done our level best with what we have.

Mr. GRAY. It has been established this morning by the General Accounting Office that they have been in 20 States and they found a lot of this in all of the States. By the time they get through with all 50 States there will be some implications of wrongdoing in each State. With that sort of figure coming up, I would think it would be incumbent on the Bureau of Public Roads to begin to tighten up now. Not just in one State.

I mention the three New England States because there has been some newspaper publicity of that sort of thing in Vermont. I was just giving you one Member's viewpoint here that I believe now is the time to start tightening up on these things.

Mr. STEVENSON. We have tightened up a great deal, and as I indicated a little earlier, we have already obtained—

Mr. GRAY. I mean with unanimity and universally. Not 500 percent in one State and nothing in another. That is the point I am getting at. You should be looking at this from a general perspective viewpoint.

Mr. COOK. Mr. Stevenson, as I understand your testimony, it is that eventually the matter was brought to your attention in Massachusetts by Mr. Libby?

Mr. STEVENSON. Mr. Libby, our regional appraiser, yes, sir.

Mr. COOK. Did that come through the normal operating procedures?

Mr. STEVENSON. Yes.

Mr. COOK. Or was it given to him through a tip, or something outside of normal procedure?

Mr. STEVENSON. No. Our own division appraiser in Massachusetts, during a visit Mr. Libby was making there on a routine check of operations, informed him of his concern with respect to the quality of appraisals being not what he could accept, and it appeared that appraisers were being selected to work who were not really qualified to do so. It was on that basis Mr. Libby did make his report, and the basis on which we acted shortly thereafter with the State to start a course of corrective action to overcome it.

Mr. COOK. Did Mr. Libby solicit an estimate from this individual?

Mr. STEVENSON. I do not know, sir. I couldn't tell you whether he solicited it or it was volunteered.

Mr. COOK. Would it be part of his usual procedures to solicit such estimate of the total situation in the various States he was covering?

Mr. STEVENSON. Only insofar as making inquiries, or if there was anything troublesome.

Mr. COOK. He would make those inquiries?

Mr. STEVENSON. Oh, yes. It was general practice. Myself, when I go out, I ask are there any problem areas up there. As a matter of fact, we have monthly right-of-way reports for submission, too, and reporting in that fashion they are received from our field offices.

Mr. COOK. But if this gentleman had not brought this matter to the attention of Mr. Libby under ordinary circumstances, he would have had no way to do it?

Mr. STEVENSON. No, sir. Not unless something comes from an outside source.

Mr. COOK. Thank you.

Mr. BLATNIK. Thank you, Mr. Stevenson.

We have a quorum call of the House. The hearing will be recessed until 2 o'clock this afternoon.

(Whereupon, at 12:35 p.m., the hearing was recessed until 2 p.m. of the same day.)

AFTERNOON SESSION

Present: Representatives Blatnik (chairman), Baldwin, Cook, Cramer, Edmondson, Fallon, Gray, Jones, Kluczynski, Robison, Scherer, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; and George M. Kopecky, chief investigator; Robert E. Manuel, minority counsel; George H. Martin, administrative assistant; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. The Special Subcommittee on the Federal-Aid Highway Program of the Committee on Public Works will resume its public hearings on the Massachusetts case.

The first witness this afternoon will be Mr. Adrian A. Beaulieu, of West Bridgewater, Mass.

Mr. Beaulieu, will you please take the witness stand?

Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BEAULIEU. I do.

Mr. BLATNIK. Please be seated.

Mr. Beaulieu, your residence is in West Bridgewater, Mass., and the house number is 3 Prosper Street. Is that correct?

TESTIMONY OF ADRIAN A. BEAULIEU, WEST BRIDGEWATER, MASS.

Mr. BEAULIEU. Yes, sir.

Mr. BLATNIK. What is your business or occupation?

Mr. BEAULIEU. I am a sales engineer.

Mr. BLATNIK. With what firm?

Mr. BEAULIEU. Beaulieu & Munroe.

Mr. BLATNIK. What type of business is that?

Mr. BEAULIEU. Well, we specialize in heating and air-conditioning equipment.

Mr. BLATNIK. All right, Mr. May.

Mr. MAY. Mr. Beaulieu, how long have you maintained that business at your current address?

Mr. BEAULIEU. Oh, about 14 years.

Mr. MAY. And the company is located at 82 Crescent Avenue in Boston?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Mr. Beaulieu, about 1957, a portion of the company's property consisted of vacant land which was taken by the Commonwealth of Massachusetts in connection with the construction of the Southeast Expressway. Is that true?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Mr. Chairman, may we swear in staff member George Kopecky?

Mr. BLATNIK. Will you please raise your right hand?

Do you solemnly swear that the testimony that you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KOPECKY. I do.

Mr. BLATNIK. Please be seated.

Mr. MAY. Mr. Kopecky, what is your title?

Mr. KOPECKY. Chief investigator of this subcommittee.

Mr. MAY. In the course of our investigation of Massachusetts certain records have been reviewed by you and under your direction?

Mr. KOPECKY. That is correct.

Mr. MAY. In connection with this present matter, will you tell the subcommittee what the files of the department of public works disclosed concerning the appraisal and the commissioners' authorization?

Mr. KOPECKY. Yes. The DPW file shows the following information on this property: It was appraised by R. E. Patts on June 12, 1956, in the amount of \$13,200.

Mr. MAY. He is a departmental appraiser?

Mr. KOPECKY. Yes.

Mr. MAY. Thank you.

Mr. KOPECKY. His appraisal was approved by Mr. K. B. Scott, dated June 14, 1956, in the same amount of \$13,200.

There was an outside appraisal made by one Julius Meyer, whose report shows an amount of \$13,700.

There was a second outside appraisal made by a Mr. Francis Sullivan, who reported an appraisal figure of \$5,000.

The review board came forth with an amount of \$13,000, and the commissioners' authorization was dated October 10, 1956, in the amount of \$13,000.

Mr. MAY. Thank you, Mr. Kopecky.

Mr. Chairman, you will note that as of October 10, 1956, the department had the commissioners' authorization to pay the property owner an amount of \$13,000.

Now, Mr. Beaulieu, were you contacted by a number of people from the department of public works in connection with this taking?

Mr. BEAULIEU. I was.

Mr. MAY. Was one of those representatives of the department of public works a man by the name of Orlando Q. Spagnoletti?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Will you tell the committee about Mr. Spagnoletti's visit to you?

Mr. BEAULIEU. Well, during the first visit he offered us a settlement of something in the vicinity of \$9,000, which we refused. And subsequently, some 2 or 3 or 4 weeks later, he came back and approached us on a basis of settling for, say, \$10,000.

We didn't hear any more from him for several weeks, and one day, while I was in the office working away, Mr. Spagnoletti came in and asked if I would come outside to meet a person that he wanted me to meet.

And so I followed him outside, and when I got outside I was introduced to a Mr. Harney who, in effect, told me that he felt sure that he could get me substantially much—substantially more money than what we had been offered; that he knew the proper people and knew his way around to the point that, perhaps, he could get us several thousand dollars more than what we had been offered.

At the time he left me a telephone number to call and suggested that I think it over and contact him if we felt that we were interested.

MR. MAY. Did Mr. Harney indicate what he might want for his trouble?

MR. BEAULIEU. Yes. He said that he would have to participate in 50 percent of the difference between what we had been offered and what he thought he might get for us.

MR. BLATNIK. What is Mr. Harney's full name?

MR. BEAULIEU. I think it was Frank Harney, if I remember.

MR. BLATNIK. Frank L. Harney?

MR. BEAULIEU. Yes.

MR. BLATNIK. And with whom was he connected?

MR. BEAULIEU. That he didn't say, and he just came in on the basis that he knew the proper people and he knew about what approach to make to get us the additional moneys.

I don't think he affiliated himself with anybody.

MR. MAY. While Mr. Harney was discussing—

MR. SCHERER. Pardon me, but it would help us understand the testimony a little better if counsel would tell us at this time who this fellow, Frank Harney, is. What is his background?

MR. MAY. Congressman, first, I would like to establish: While Mr. Harney was discussing these matters with you Mr. Spagnoletti was standing there?

MR. BEAULIEU. Yes.

MR. MAY. And he was overhearing you?

MR. BEAULIEU. Yes, he was standing right at my elbow.

MR. MAY. Mr. Kopecky, could you tell the committee a little bit about Mr. Harney?

MR. KOPECKY. Yes. Mr. Harney—

MR. MAY. Was he associated with the department of public works as of this time?

MR. KOPECKY. Yes—at that time?

MR. MAY. Yes.

MR. KOPECKY. Not at that time.

MR. WRIGHT. Mr. Chairman, what was "this time"? I wonder if the witness might place it in point of time for us.

MR. BEAULIEU. Well, I don't remember for sure. This dates back some 4 or 5 years ago.

MR. MAY. We will establish in just a moment that the time was July of 1957.

MR. BEAULIEU. All I do remember is that I was out there in shirt sleeves—

MR. WRIGHT. It would have been 1957?

Mr. BEAULIEU. I beg your pardon?

Mr. WRIGHT. It would have been 1957?

Mr. BEAULIEU. I would think so.

Mr. MAY. Mr. Kopecky, at that time Mr. Harney was not employed by the department of public works. Is that true?

Mr. KOPECKY. That is correct. It shows that he did not become employed with the department of public works until August 18, 1958.

Mr. MAY. August 18, 1958?

Mr. KOPECKY. Yes, sir.

Mr. MAY. And the period we are discussing now was July 1957. Mr. Beaulieu, did Mr. Spagnoletti present to you a card during his contacts with you?

Mr. BEAULIEU. Yes, he did.

Mr. MAY. For the record, I present to you a card. Would you identify that, Mr. Beaulieu?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Is that the card Mr. Spagnoletti gave to you?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Would you read the printed side, please?

Mr. BEAULIEU (reading):

Orlando Q. Spagnoletti, Insurance Broker, Real Estate and Appraisal, 470 Center Street, Jamaica Plain 30, Massachusetts.

Mr. MAY. It contains a telephone number Jamaica 4-9711?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. And above that, Jamaica 4-0161?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Would you read what is contained on the reverse side of that card?

Mr. BEAULIEU (reading):

Commonwealth of Massachusetts, Right-of-Way Department, Capital 7-7800.

Mr. MAY. That is in writing?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Thank you. Mr. Kopecky, was Mr. Spagnoletti employed by the department of public works in July 1957?

Mr. KOPECKY. Yes.

Mr. MAY. What do the records of the department show with respect to Mr. Spagnoletti's employment?

Mr. KOPECKY. As far as Mr. Spagnoletti is concerned, it is indicated that he became employed by the department of public works, effective December 8, 1953, and he was terminated May 31, 1961—as of April 14, 1961, which was the last day he reported for work.

Mr. MAY. Thank you. Mr. Kopecky, before we proceed, would you tell the subcommittee what the files of the department show with respect to the negotiations with the property owners on this taking.

Mr. KOPECKY. I read as follows, which I quote from the DPW records:

September 17, 1956: Mr. Beaulieu out of town; October 10, 1956, explained taking; wants expert appraisal before talking money;

March 4, 1957: Blunt appraisal at \$12,500; made offer, \$10,000; May 29, 1957, appointment made for Friday a.m.;

July 11, 1957: Made offer, \$11,000.

Mr. MAY. Hold it there, Mr. Kopecky. Did Mr. Spagnoletti actually offer you \$11,000?

Mr. BEAULIEU. Well, I can't be sure of the actual figures. I know he made us two offers and, whatever the offers were, the party claimed that he could get us several thousand dollars over the figures that were submitted to us.

Mr. MAY. So up to this point we have this situation:

You are the property owner. You are approached by a representative of the State department of public works, Mr. Spagnoletti, who comes to you and says, "We will offer you first \$9,000 and then later \$10,000."

He comes to you again in your office and says, "Will you come out in the street; I have somebody I want you to meet."

Mr. BEAULIEU. That's right.

Mr. MAY. You go out in the street and there stands Mr. Frank L. Harney, and Mr. Harney and you and Mr. Spagnoletti stand there and Mr. Harney says that he has the connections and he has the wherewithal so that he can get you \$2,000 or \$3,000 or \$4,000 more than you have been offered?

Mr. BEAULIEU. That's right.

Mr. MAY. But for that, of course, he will have to get 50 percent of all you get above the offer that had previously been made to you.

Mr. BEAULIEU. That's right.

Mr. MAY. Is that right? Were you somewhat disturbed about this approach?

Mr. BEAULIEU. I am afraid I was.

Mr. MAY. What did you do then?

Mr. SCHERER. Maybe I was not paying attention, but a little while ago I wanted to know who "Harney" was.

Who is the man? Will you tell us? I think you know who he is. You made the investigation. But we will understand the testimony a little better if you tell us what Harney's position was at the time.

Mr. MAY. Mr. Congressman, as of this time Mr. Harney was just somebody outside the Department of Public Works. He is not associated with the department of—

Mr. SCHERER. I got that. I understand that very clearly, but what did your investigation show Harney did?

What was he doing at that time? Who was he representing? Do you know?

Mr. MAY. At that time Harney was representing Harney. We will unfold this as the hearings progress, to get a complete identification.

Mr. SCHERER. Was he a real estate man? Was he a lawyer or was he in business?

Mr. BLATNIK. He was a free agent, a man on his own, acting at this point where we are relating exactly what happened. This man was unknown to our witness and he has related the conversations.

Mr. KLUCZYNSKI. He was a contact man.

Mr. SCHERER. If you do not know—I just thought maybe you knew who he was. All right, go ahead. I will wait.

Mr. BLATNIK. Mr. May?

Mr. MAY. How did you leave it with Mr. Spagnoletti and Mr. Harney?

Mr. BEAULIEU. Well, they left me a telephone number to call if we were interested.

So I told him that we would think it over and that if we were interested we could contact him, and then upon leaving them I immediately returned to my office and called Arthur Wilcox, who had been a friend of mine for a good many years and who was a real estate man, and asked him what he knew about this sort of shenanigans, and I would like to see him to tell him what had transpired.

And, in effect, he told us to disregard the two gentlemen and contact the then, I think, assistant commissioner of public works of the State of Massachusetts, and to make an appointment to see him.

Mr. MAY. Who was that?

Mr. BEAULIEU. That was Commissioner Dole.

Mr. MAY. Associate Commissioner Fred Dole?

Mr. BEAULIEU. Yes. I think it is D-o-l-e. So we took his advice and contacted Mr. Dole's secretary, and made an appointment to see him, and my partner, Mr. Munroe, kept the appointment and proceeded to resolve the differences and settle for some \$12,600 or thereabouts.

Mr. MAY. Thank you. As a matter of fact, Mr. Beaulieu, Mr. Arthur Wilcox was at that time chairman of the Real Estate Review Board.

Mr. BEAULIEU. I wasn't aware of it at that time.

Mr. MAY. He was, of Massachusetts. So, in essence, what Mr. Wilcox told you was to have nothing to do with these people?

Mr. BEAULIEU. That's right.

Mr. MAY. But for you to go and see Associate Commissioner Dole?

Mr. BEAULIEU. That's right.

Mr. MAY. And carry on negotiations with Mr. Dole?

Mr. BEAULIEU. That's right, and I think he did tell us to tell Mr. Dole everything that had transpired, which we did.

Mr. MAY. Mr. Chairman, we do have an affidavit from Mr. Lawrence Munroe, who is in business with Mr. Beaulieu, and I would like Mr. Constandy to read it into the record at this time.

Mr. CONSTANDY (reading):

Lawrence Munroe being duly sworn deposes and says:

I reside at 12 King Street, Auburndale, Mass.

I am an officer of the Beaulieu-Munroe Corp. with offices at 82 Crescent Avenue, Boston, Mass.

In or about the summer of 1957, Adrian A. Beaulieu, who is also an officer of the corporation, told me that two men had visited our office at 82 Crescent Avenue, Boston, and had asked him to speak to them on the sidewalk outside of the office. Mr. Beaulieu further informed me that one of the men was a short dark Italian who said that he was employed by the Commonwealth; Mr. Beaulieu also told me that the other man was a big man, apparently of Irish extraction, who did most of the talking. Mr. Beaulieu related to me that the two men had informed him that the Commonwealth was taking part of their property and that they were able to obtain more money in payment for the part taken than what we normally would receive. Mr. Beaulieu also told me that the two men said that they wanted to be paid one-half of anything over \$10,000 paid to us by the Commonwealth.

I have made this affidavit willingly and voluntarily at the request of James J. Fitzpatrick, who has identified himself to me as being an associate counsel to the Special Subcommittee on the Federal-Aid Highway Program, House of Representatives, Washington, D.C.

LAWRENCE MUNROE.

It was subscribed to and sworn to on the 31st day of January of 1962.

Mr. MAY. Actually, what happened, Mr. Beaulieu, is that Mr. Munroe did go to see Commissioner Dole, did negotiate with Commissioner Dole, and you received \$12,650, plus a tax allowance of \$103.26 for your property.

Mr. BEAULIEU. Yes, sir.

Mr. MAY. Is that true? You were kind enough to make available to us the notes that you kept in your file at the company and those notes read—that are made by Mr. Munroe—they read—excuse me. This is after seeing Commissioner Dole on July 16, 1957:

Bona fide written offer of \$12,650. I indicated this would be acceptable.

Mr. Kopecky, what did the departmental files show with respect to the settlement for that property?

Mr. KORECKY. The DPW file reads as follows:

July 17, 1957, memo from Associate Commissioner Dole, asking that land damage settlement form be forwarded to him in the sum of \$12,650.

July 25, 1957, signed offer of settlement for \$12,650, plus tax allowance, \$103.26.

Mr. MAY. Thank you. Also at Mr. Wilcox's suggestion you people had an appraisal made of your own?

Mr. BEAULIEU. Yes, we did.

Mr. MAY. And your appraiser came in with the figure of \$12,775?

Mr. BEAULIEU. Yes, sir.

Mr. MAY. So this figure of \$12,650 seemed to be reasonable to you and you accepted it?

Mr. BEAULIEU. We were perfectly satisfied.

Mr. WRIGHT. Mr. Chairman——

Mr. BLATNIK. Mr. Wright?

Mr. WRIGHT (continuing). May I ask a question at this point without interrupting the trend of questioning?

Do I understand that when this improper offer was made to you, you called your friend, Mr. Arthur Wilcox——

Mr. BEAULIEU. Yes, sir.

Mr. WRIGHT (continuing). And told him about it? Mr. Wilcox advised you to go directly to Commissioner Dole——

Mr. BEAULIEU. Yes, sir.

Mr. WRIGHT (continuing). And disregard anything that had been said to you by the men, Spagnoletti and Harney. Is that correct?

Mr. BEAULIEU. Yes, sir.

Mr. WRIGHT. Did Mr. Wilcox seem to be shocked about this thing?

Mr. BEAULIEU. Well, he seemed to be a little bit concerned, yes.

Mr. WRIGHT. Did you, when you talked to Mr. Dole, did you——

Mr. BEAULIEU. I didn't talk to Mr. Dole. My partner did.

Mr. WRIGHT. Your partner, Mr. Munroe, talked to Mr. Dole.

Do you know whether Mr. Munroe, your partner, divulged to Mr. Dole what had taken place?

Mr. BEAULIEU. I think so, yes.

Mr. WRIGHT. You believe that he did?

Mr. BEAULIEU. Yes.

Mr. WRIGHT. Well, now, this seems to be a matter of some importance, because this was in 1957 and Mr. Dole, if he did not personally know about it, at least had information brought to his department,

according to your belief and recollection, to the effect that this improper advance had been made to you by Mr. Spagnoletti and Mr. Harney.

Yet Mr. Spagnoletti was, at that time, employed by the department of public works and remained employed by the department of public works until sometime last year.

Mr. Harney, who was not then employed by the department of public works, and was a culpable party, was employed, according to the information we have here, on August 18, 1958.

Therefore, it seems a matter of some importance to me and, I think, perhaps to the committee, whether or not the names of these people who had made this improper approach to you were divulged to any responsible official in the Department of Public Works of the State of Massachusetts at that time.

Mr. BEAULIEU. I wouldn't be sure whether the actual names were used, because I wasn't there. It was my understanding that he was supposed to pass along to the commissioner what had transpired.

Mr. JONES. Will the gentleman yield?

Mr. WRIGHT. Yes.

Mr. JONES. What information did you receive that that information had been conveyed to the department?

Mr. BEAULIEU. Well, we are a partnership and we come pretty near knowing what the others are doing.

Mr. JONES. To your best recollection what took place as far as the—relating to you the information that there had—that—

Mr. BEAULIEU. Well, that he had contacted the commissioner and that he had agreed on a settlement, and that—

Mr. JONES. Did he say how he had contacted him?

Mr. BEAULIEU. Yes. He contacted his secretary and made an appointment by phone to see the commissioners at his convenience which, I believe, was within a matter of a day or two after the telephone conversation.

Mr. JONES. You do not think there is any question as to whether or not all of the information had been divulged to the proper parties?

Mr. BEAULIEU. As far as I know, yes.

Mr. EDMONDSON. May I ask this?

Mr. BLATNIK. Mr. Edmondson?

Mr. EDMONDSON. Is the statement of Commissioner Dole going to be brought to the committee?

Mr. MAY. Yes. I might say, Mr. Congressman, it was Mr. Munroe's recollection that, when he talked to Commissioner Dole, he did tell him about this trouble. We talked to Commissioner Dole.

Commissioner Dole has no recollection of his learning of this particular approach. He does not deny it. He says he has no recollection of it.

Commissioner Dole will be a witness later in this hearing.

Mr. WRIGHT. Mr. Chairman, did counsel say earlier that Mr. Arthur Wilcox was at that time the chairman of the State real estate review board?

Mr. MAY. Yes, Congressman.

Mr. WRIGHT. It seems to me that if this matter was brought to the attention of the appropriate State authorities as early as 1957 there should have been some shock on their part that this was taking place

and some corrective action should have been contemplated at that time.

Is it anticipated that Mr. Munroe will be here or that he will have—

Mr. MAY. We had not planned on calling Mr. Munroe. We do have Mr. Munroe's affidavit, and we also have Mr. Munroe's information to us that it was his recollection that when he saw Commissioner Dole he told Commissioner Dole about this approach.

We also have Commissioner Dole saying that he did not recall it.

Mr. BALDWIN. May I ask, is that on Mr. Monroee's affidavit?

Mr. MAY. No, sir; it is not.

Mr. BALDWIN. Well, now, we have 3 or 4 more weeks of hearings. If he is not going to be called, Mr. Chairman, I would suggest that perhaps we can get an additional affidavit from Mr. Munroe, answering the specific question on this issue.

This is a fairly important matter, if Mr. Dole is going to be down here.

Mr. MAY. We can do that.

Mr. GRAY. Mr. Chairman, what is the date of this affidavit?

Mr. MAY. January 31, 1962.

Mr. GRAY. It relates to what period though? 1957?

Mr. MAY. 1957.

Mr. CRAMER. Mr. Chairman, are we going to have Mr. Harney and Mr. Spagnoletti as witnesses?

Mr. MAY. Mr. Chairman, I talked to the attorneys representing both Mr. Spagnoletti and Mr. Harney.

Both Mr. Spagnoletti and Mr. Harney have been subpoenaed to appear at these hearings later. I told the attorneys for the people that we expected to receive unfavorable information today, information that would reflect unfavorably upon both Mr. Harney and Mr. Spagnoletti.

I invited Mr. Spagnoletti and Mr. Harney to appear here today to receive the testimony, if they so desired.

We may call at this time Mr. Frank L. Harney?

Mr. CRAMER. Are you going to call him as a witness?

Mr. MAY. Yes.

Mr. CRAMER. Is this gentleman excused or—

Mr. MAY. Not yet.

Mr. BLATNIK. Just a moment.

Is Mr. Frank L. Harney in the room?

(No response.)

Mr. MAY. Mr. Orlando Q. Spagnoletti?

(No response.)

Mr. BLATNIK. Is Mr. Spagnoletti in the room?

(No response.)

Mr. WRIGHT. Mr. Chairman, is there some reason why these people should expect not to have to testify?

Mr. CRAMER. Well, have they been subpoenaed?

Mr. MAY. They have both been subpoenaed for later in the hearings, Congressman.

We expect to receive a considerable amount of information relative to these two individuals, and it was anticipated that we would want to hear from them after the information was disclosed.

However, we thought, in fairness, that we should alert them to the fact that this information, unfavorable information, would be received here today and give them an opportunity to refute it if they so desired.

We told them that the usual expenses would be paid by the committee. They were invited to appear today. They are summonsed to appear later in the hearings.

MR. COOK. Mr. Chairman?

MR. BLATNIK. Mr. Cook?

MR. COOK. In your conversation, sir, with Mr. Wilcox, did he say anything as to whether he had any other complaints along the line of yours?

MR. BEAULIEU. Well, I think he inferred that there had been some rumblings to the effect that maybe something like this might have been going on.

MR. COOK. He inferred that that practice was not brand new to him? Is that correct?

MR. BEAULIEU. Well, I don't think it was entirely a shock to him, I gathered.

MR. WRIGHT. I believe you stated—excuse me.

MR. COOK. I yield to you.

MR. WRIGHT. I believe you stated that after the time you called Mr. Wilcox, you called him because he was a friend of yours and someone in whose judgment you had confidence in matters of this kind?

MR. BEAULIEU. Yes, sir.

MR. WRIGHT. You did not know at that time that he occupied that official position?

MR. BEAULIEU. No; I didn't.

MR. WRIGHT. That is, an official position for the State of Massachusetts?

MR. BEAULIEU. No; I didn't. I knew he was a highly recognized real estate operator in the city of Boston, but I wasn't aware that he was on the review board at the time.

MR. BLATNIK. Mr. May?

MR. CRAMER. Mr. Chairman, may I ask a question?

MR. BLATNIK. Mr. Cramer.

MR. CRAMER. You said that Mr. Harney indicated to you, as I recall your testimony, that he knew the proper people and his way around and had the connections.

MR. BEAULIEU. That's right.

MR. CRAMER. Did he say who those connections were?

MR. BEAULIEU. No, sir; he did not.

MR. CRAMER. You never had any indication as to who he was talking about?

MR. BEAULIEU. No, sir.

MR. CRAMER. He did not try to prove it by suggesting any specific names or otherwise?

MR. BEAULIEU. No.

MR. CRAMER. That is all.

MR. COOK. Mr. Chairman?

MR. BLATNIK. Mr. Cook.

Mr. COOK. I noticed in the affidavit of Mr. Monroe that he mentioned the fact that—I believe he did, at least—that you had told him that both of these gentlemen had talked with you along this line. Is that correct?

Mr. BEAULIEU. No; I think Mr. Harney did practically all of the talking.

Mr. COOK. What did Mr. Spagnoletti do at that time?

Mr. BEAULIEU. He was there.

Mr. COOK. Did he offer any comment or add anything?

Mr. BEAULIEU. Well, as I remember—you see, you are trying to get me to recall something that is 4 or 5 years old—as I recall, his comments were merely in a vein of trying to build up Mr. Harney as being a big wheel and somebody who knew his way around. I don't think he participated in the actual suggestions.

Mr. COOK. But he was the man who asked you to step out and meet Mr. Harney?

Mr. BEAULIEU. Yes, sir.

Mr. CRAMER. Did you understand this 50-percent kickback was supposed to go—who was it supposed to go to?

Mr. BEAULIEU. As far as I was concerned, it was going to Harney. I don't know, beyond that, what he was to do with it.

Mr. CRAMER. How about Spagnoletti?

Mr. BEAULIEU. I don't know.

Mr. CRAMER. You don't know anything about that?

Mr. WRIGHT. But Spagnoletti did identify himself to you as a representative of the State?

Mr. BEAULIEU. Oh, he is the State appraiser or negotiator that had contacted us previously.

Mr. WRIGHT. And he did invite you or ask you to come outside—

Mr. BEAULIEU. That's right.

Mr. WRIGHT (continuing). And meet Mr. Harney? Did it seem strange to you at the time that he would ask you to come outside and meet this party?

Mr. BEAULIEU. Oh, sure. As far as I was concerned, that was a dead giveaway.

Mr. CRAMER. Wasn't it equally strange that the guy who introduced you to Harney was the fellow that was supposed to be representing the people's interests as an employee of the State?

Mr. BEAULIEU. Yes, sir.

Mr. CRAMER. You assumed it is his duty to see that you are not paid any more than the State has to pay you.

Mr. BLATNIK. Mr. May.

Mr. SCHIERER. That is the reason he complained.

Mr. MAY. Just one point: Mr. Kopecky, what do the files of the department of public works show with respect to Mr. Spagnoletti's participation in this case? Does the name appear in the file at all, Mr. Kopecky?

Mr. KOPECKY. No; I do not see that his name—yes. His name does not appear in the DPW file on the Munroe Corp. except in one situation, and that is in regard to a memorandum by Commissioner Dole, dated July 17, 1957, to the right-of-way engineer, requesting him to prepare an offer of land damage settlement in the amount of \$12,650 and stamped by the right-of-way office.

The stamp reads "Referred to" and written beside that is the name "Thompson."

The stamp also reads "Report back to" and beside that is written the name "MacNeil." Beneath that name is written "Spag."

Mr. MAY. The only place Mr. Spagnoletti's name appears in the file is on that document and it is written "Spag"?

Mr. KOPECKY. That is right.

Mr. MAY. Mr. Chairman, we might make note here that in this case the review board established a figure of \$13,000 and in October—October 1956, the commissioners authorized the payment of \$13,000.

So that from that time on the State had an opportunity to negotiate with the property owner up to that amount, and you will notice, or, as you will see later in the hearing, the freedom with which the negotiator operates. The person representing the State, like Mr. Spagnoletti, is free to go out and begin his offers at \$9,000, \$10,000, and then they can make an approach to the property owner and they know they can settle for \$13,000. This has been authorized.

So they are allowed to, or they are given the opportunity to, approach the property owner and say in a great way, "We will get you another two or three thousand dollars, and we will want 50 percent of all over the initial officer."

I want to thank Mr. Beaulieu very, very much for his help and for his testimony in this matter.

Mr. BLATNIK. Mr. Beaulieu, the chairman, too, wants to express, in behalf of the committee, his appreciation for your wholehearted cooperation, forthrightness, and it has been of assistance here in getting the preliminary stage of this hearing underway. Thank you very much.

Mr. BEAULIEU. You are welcome.

Mr. WRIGHT. Mr. Chairman, may I say that if every citizen, approached in the manner Mr. Beaulieu was approached, had reacted in the manner in which Mr. Beaulieu reacted, there would have been no unjust enrichment in this program for any individuals, and although, in this instance, apparently his report of this event did not result in the dismissal of one such individual nor prohibited the employment at a later date of another such individual, I think he clearly has done the right thing and the thing which a citizen is expected to do. And I think the committee would commend him for that and certainly would look forward with hope and anticipation that other citizens will do the same thing.

Mr. MAY. Yes, Congressman. I might mention that not only did Commissioner Dole's report not result in a dismissal of Mr. Spagnoletti but, as we will see later in the hearing, within 2 months Mr. Spagnoletti received a promotion.

Mr. Chairman, I would like to make the card of Orlando Q. Spagnoletti exhibit No. 2.

Mr. BLATNIK. Without objection, it is so ordered.

(The document referred to was marked "Exhibit No. 2," and will be found in the files of the subcommittee.)

Mr. MAY. I would like to have Mr. Munroe's affidavit marked as "Exhibit No. 3."

Mr. BLATNIK. Without objection, it is so ordered.

(The document referred to was marked "Exhibit No. 3," and will be found in the files of the subcommittee.)

Mr. EDMONDSON. Mr. Chairman, did the account given, regarding the transaction from the roads office, give the picture as to what Mr. Spagnoletti's involvement in this case was?

Mr. MAY. It does not seem to be an accurate portrayal of the accounts which took place, and this, we might note, will be apparent throughout the hearings. They frequently do not actually reflect what takes place during the negotiations with the property owner.

Mr. EDMONDSON. Do they indicate that Mr. Spagnoletti had the responsibility for negotiations on this particular—

Mr. MAY. There is no such indication in the file, Congressman. The only time Mr. Spagnoletti's name appears in the file is on that one case where it is just written across one document, where it was the word "Spag."

Mr. WRIGHT. And that is written across at an angle?

Mr. MAY. Yes.

Mr. SCHERER. Did the staff, in its investigation, discover any other incidents? Were any other incidents disclosed which involved Spagnoletti collaborating with this man, Harney?

Mr. MAY. Yes, sir. We will hear about that later in the hearings. Mr. Congressman, we were going to speak of Mr. Harney's background later in the hearing, but I might mention this: We have already heard that Mr. Harney later became employed by the department of public works and, in the course of our investigation, we noted this, that on November 7, 1960, Harney executed a Massachusetts civil service application on which he claimed the following employment background, beginning with 1955:

It shows—

June 1955 to November 1, 1957, treasurer of Harney-Venuto Construction Co., engaged in general contracting;

January 1, 1956, to August 1958, real estate agent, self-employed, working on commissions.

Mr. BLATNIK. The next witness is Mr. William Herbits, of Boston, Mass.

Mr. Herbits, please take the stand. Raise your right hand. Do you solemnly swear that the testimony that you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HERBITS. I do.

Mr. BLATNIK. Be seated.

TESTIMONY OF WILLIAM HERBITS, LAWYER, BOSTON, MASS.

Mr. BLATNIK. Mr. Herbits, would you give your address?

Mr. HERBITS. William Herbits, office, 70 State Street, Boston.

Mr. BLATNIK. What is your profession or occupation?

Mr. HERBITS. Lawyer.

Mr. BLATNIK. You are an attorney. Are you in an office by yourself?

Mr. HERBITS. By myself.

Mr. BLATNIK. Mr. May?

Mr. MAY. Mr. Herbits, have you known Frank L. Harney for several years?

Mr. HERBITS. Yes.

Mr. MAY. Do you recall about how many years you have known him?

Mr. HERBITS. Oh, about 20 years.

Mr. MAY. How did you happen to know Mr. Harney?

Mr. HERBITS. Well, he came to see me on some matters relating to his mother-in-law and his wife a year ago.

Mr. MAY. Do you—you have served as the mother-in-law's attorney on occasions?

Mr. HERBITS. That's right.

Mr. MAY. Mr. Herbits, did you receive a visit from Frank Harney sometime about the end of 1958?

Mr. HERBITS. I did.

Mr. MAY. Would you relate to the subcommittee what took place on that occasion?

Mr. HERBITS. Well, Mr. Harney came to see me on some matter relating to his mother-in-law's business, and in the course of the conversation I asked him what he was doing.

He said he was then employed by the department of public works for the Commonwealth as an appraiser or a negotiator for land takings in connection with the Federal highway program.

I expressed my amazement that he should be in that position because I said—I said, "To my knowledge, you don't know any more about the value of land than you do about a hole in the wall," or something like that.

"Well," he said. "I don't have to know much." He said, "Everything is pretty well regulated."

I said, "What do you do?" "Well," he says, "all I have to do is go out and make deals with the landowners," and he says, "I am doing myself no harm."

I said, "How do you figure that?" "Well," he said—he says, "We get an appraisal—we give them an offer that is higher than you normally would get and the boys cut it up."

I said, "What boys?" "Well," he said, "the boys on the hill, myself." He said, "How would you like to represent one of those owners as an attorney?"

I said, "Where are these owners?" "Well," he says, "they are in the southwestern part of the State."

I said, "Why would anybody from way out there want to retain me as an attorney? They have their own lawyers."

"Well," he said, "that's simple." He said, "We recommend the lawyers that handle these things."

I said, "Well, what do the lawyers get out of it?" "Well," he said, "they get fees. Some of them. Of course, they have to take care of whatever has to be taken care of and it's very, very simple."

I said, "Well," I said, "you are joking." I said, "You wouldn't"—I said, "You wouldn't offer me an opportunity to make money even if it was legitimate."

I said, "But you come to me with a deal of this kind." I said, "You better forget that you ever mentioned it to me. I don't want you to tell anybody you talked to me about it."

He says, "Why not?" "Well," I said, "whoever is, and does business under this line is going to get in serious trouble and don't come by and discuss anything like this with me again."

I haven't seen him since. I talked to him on the phone a couple of times about other matters, but that is substantially the results of his visit to me in connection with this.

MR. SCHERER. You were his mother-in-law's attorney, not his attorney?

MR. HERBITS. That's right. And, in fact, I hadn't been her attorney either for many years. I hadn't been friendly with this man for a number of years.

MR. SCHERER. I just wanted to be sure you were not talking to him as attorney-client.

MR. HERBITS. No, I wasn't talking to him as his attorney or even his mother-in-law's attorney at the time.

MR. BALDWIN. Will the gentleman yield?

MR. SCHERER. Yes.

MR. BALDWIN. Could I ask: You mentioned that he said he normally split up the extra sum between the boys on the hill and others. What is the normal usage of the reference to the "hill"?

What does that mean?

MR. HERBITS. Well, the State house.

MR. BALDWIN. Thank you.

MR. MAY. Mr. Herbits, you received this impression from Mr. Harney that he would find a property owner willing to go along with such a scheme.

Mr. Harney would see to it that the appraisal was rigged to a high figure, a high award would be received. Mr. Harney would recommend you as the attorney, if you went along with this, and you would receive a large fee after which you would be expected to split up this fee with Harney and others?

MR. HERBITS. That was my impression.

MR. MAY. I want to thank you very much—

MR. FALLON. Mr. Herbits, could I ask you one question? What motivated you to bring this information to the attention of this committee?

MR. HERBITS. Well, I am a citizen. I am a taxpayer and I am very conscious of what goes on around me.

And I feel that I owe it as a duty to this country, which is my adopted country, to throw any light on anything that I think is wrong which may help it.

MR. FALLON. Well, I want to congratulate you, Mr. Herbits.

MR. HERBITS. Thank you.

MR. FALLON. And I am sure—

MR. CRAMER. Mr. Chairman, before the witness leaves may I ask a question?

MR. FALLON. Mr. Cramer.

MR. CRAMER. I, too, want to congratulate you for coming forward with this information.

As you indicated the "boys on the hill," the hill meant Beacon Hill, I suppose?

MR. HERBITS. That's right.

MR. CRAMER. Capitol house?

Mr. HERBITS. That's right.

Mr. CRAMER. The legislative body?

Mr. HERBITS. That's right.

Mr. CRAMER. Did anybody mention anybody—did he mention any names? He said the "boys on the hill"?

Mr. HERBITS. Well, I recollect that he did, but I had forgotten them and, as I told the investigating committee, I wouldn't have repeated them even if I could, because the man is so untrustworthy to me that anything he told me I would consider a lie.

And so far I have forgot to remember anybody he mentioned.

Mr. CRAMER. Well, then he did mention some names to you?

Mr. HERBITS. Well, as I recollect, he did throw around some names.

Mr. CRAMER. And you won't repeat what those names were?

Mr. HERBITS. I can't, sir.

Mr. CRAMER. You mean you recall who they were, do you not?

Mr. HERBITS. At this time I really can't say that I do. That was—I consider that simply his way of expressing himself, knowing him as I did over the many years, that anything that he said would be considered as false, and I certainly wouldn't quote him even if I knew, because I might involve somebody who was innocent. And now, I wouldn't put any reliance on anything that man said.

Mr. CRAMER. He did not say who he was going to cut it up with?

Mr. HERBITS. No, just the "boys on the hill."

Mr. SCHERER. You are telling us, under oath now, however, that you do not recall the names of the individuals he mentioned?

Mr. HERBITS. At this time I really can't recall them.

Mr. SCHERER. You can't? You said that in your conversation—when some member asked you what prompted you to make this information known, that you were aware of what was going on. Do you have any other information concerning scandals in the highway department?

Mr. HERBITS. Well, sir, I don't mean particularly the highway department, but I know a lot of scandals that are going around in Massachusetts. We can't help knowing about them even if we only read the papers.

Mr. MAY. Do you know this of your personal knowledge?

Mr. SCHERER. Just a minute. That is what I wanted to ask.

Mr. HERBITS. I know—I know what is going on in Massachusetts. Any citizen knows what goes on there.

Mr. SCHERER. But you do not have any specific information, similar to the information that you gave the committee, with reference to Harney, concerning any other scandal?

Mr. HERBITS. No, sir. No.

Mr. SCHERER. This is the only specific information to which you are able to testify?

Mr. HERBITS. That's right, and that is only because I happened to be talking to him.

Mr. SCHERER. All right.

Mr. EDMONDSON. Mr. Chairman?

Mr. BLATNIK. Mr. Edmondson?

Mr. EDMONDSON. Mr. Herbits, like other members of the committee, who have expressed themselves commending you for giving this information to the committee, I would like to congratulate you upon that.

I would like to know if at the time of this contact or this attempt to involve you in a conspiracy to defraud the State, if you brought it to the attention of any authorities in your community or in the State of Massachusetts, who might have a responsibility for prosecuting attempts of this kind?

Mr. HERBITS. Well, sir, I don't know, but the next thing I knew two members of the investigating committee, who are sitting in front of me, called on me.

How they got the information where I could shed light on this, I don't know, but they came to visit me and I told them what I felt they should know as well as I could present it to them.

Mr. EDMONDSON. Well, as I understand this contact with you, it occurred several years ago. Is that correct?

Mr. HERBITS. Yes, sir. It was 3 or 4 years ago.

Mr. EDMONDSON. And I assumed the interview by the members of this committee was within the last few months?

Mr. HERBITS. No, they had seen me considerably earlier than that.

Mr. MAY. A couple of years ago.

Mr. HERBITS. Yes.

Mr. EDMONDSON. A couple of years ago?

Mr. HERBITS. Yes. Yes.

Mr. MAY. June 1960, June 8.

Mr. SCHERER. And that was how long after this incident that you have described to us took place, that the committee investigators saw you?

Mr. HERBITS. Probably a year or a year or more.

Mr. EDMONDSON. Mr. Chairman, I think I was pursuing this line of interrogation. I would like to continue it.

Mr. SCHERER. I am sorry.

Mr. EDMONDSON. What was the approximate time of your first contact with Harney?

Mr. HERBITS. Well, I felt it was the latter part of 1958.

Mr. EDMONDSON. The latter part of 1958?

Mr. HERBITS. Yes. I can't remember distinctly. I made no notes. I kept no records about it.

Mr. EDMONDSON. Now between the latter part of 1958 and the time of the committee—the time the committee staff investigators came to see you, did you communicate with any State or local law enforcement authority or with anybody responsible for good highway management and good highway procedures in the State of Massachusetts and tell them about this?

Mr. HERBITS. Well, I didn't. No, I considered it futile to go up there and talk about a thing like this. It wouldn't make any impression upon them.

Mr. SCHERER. I did not hear what the witness said. You said you considered it what?

Mr. HERBITS. Futile.

Mr. SCHERER. I did not hear what you then said.

Mr. HERBITS. I said I considered it futile for me to express myself to anyone; that they would pay no attention to me.

Mr. CRAMER. What gives you this feeling?

Mr. HERBITS. What?

Mr. CRAMER. What gives you that feeling?

Mr. EDMONDSON. Mr. Chairman, may I complete my questions before I am interrupted by the minority over there?

Mr. CRAMER. Excuse me.

Mr. SCHIERER. It is the minority all right.

Mr. EDMONDSON. Mr. Herbits, what I am trying to get at is to whom did you communicate these facts in advance of the interview with you by the representatives of the committee, because very obviously you told somebody about this, that lead the committee staff people around to your door to ask you questions about it.

Mr. HERBITS. Well, I don't remember. I talk a good deal. I express myself. I sound off, and they got wind of me somehow and they came to see me. I don't like these things. I express myself.

Mr. EDMONDSON. So actually you did not seek out the committee staff to tell them about it?

Mr. HERBITS. No.

Mr. EDMONDSON. They sought you out?

Mr. HERBITS. That's right.

Mr. EDMONDSON. Well, I withdraw at least a portion of my commendation to you for your appearance here.

I am glad that you are here telling the facts today, but I would feel better about it personally if you had gone to the local enforcement people, in the first place, and, failing in that, if you had gone to the committee and initiated the inquiry into what you knew about it yourself.

Mr. HERBITS. Well, sir, I will say this: I will say it again. I attached no importance—I didn't even believe Mr. Harney when he told me about that, because I considered that man's word absolutely valueless. I thought he was just boasting or sounding off. I didn't attach any importance to what he said.

Mr. EDMONDSON. But you did later determine that he was employed by the right-of-way department of the highway——

Mr. HERBITS. He was, and I was amazed.

Mr. EDMONDSON. I will be glad to yield to the gentleman from Ohio—I mean——

Mr. COOK. Mr. Herbits, you mentioned several phone calls that you received later from Mr. Harney. Did he at any time call you with reference to your having spoken to the investigator of this committee?

Mr. HERBITS. No, not in connection with this call.

Mr. COOK. None whatsoever?

Mr. HERBITS. None whatsoever.

Mr. BLATNIK. Are there any more questions?

Mr. CRAMER. Mr. Chairman?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. I was interested in your comment that you thought it was futile to call this sort of thing to anybody's attention; that no one would pay any attention.

Now is that your feeling, that the citizens of Massachusetts—it wouldn't do any good to complain about these things? You say these wrongdoings are common knowledge? What makes you feel that way?

Mr. HERBITS. Well, first of all, I really feel that way, sir.

Mr. CRAMER. Why?

Mr. HERBITS. Because the way—during the years when a certain administration was on Beacon Hill I felt that it was run by people—

run in the manner that anybody outside of it had very little voice in what went on.

Mr. CRAMER. What administration are you talking about?

Mr. HERBITS. Well, I am talking about—what I am talking about is the administration on Beacon Hill at the time. The government in the State administration.

Mr. CRAMER. Well, what State administration was that?

Mr. HERBITS. Well, it was during the administration who appointed Harney as an investigator—I mean, as an appraiser or as a negotiator.

Mr. CRAMER. And you felt that Harney just wasn't qualified to do that job?

Mr. HERBITS. I felt that—I said if anybody appointed that man in that capacity he would certainly not listen to me, because the slightest inquiry would disclose his capacity and his incompetence to handle that kind of a job. It was ridiculous for me to try to tell them.

Mr. BLATNIK. Thank you.

Mr. JONES. Mr. Herbits, how long have you known Mr. Harney prior—

Mr. HERBITS. I said I had known him about 20 years, 18.

Mr. JONES. Have you known his general reputation?

Mr. HERBITS. Well, I didn't have to know it. I knew it.

Mr. JONES. No; I didn't ask you that question as a lawyer. Did you know his reputation?

Mr. HERBITS. Well—

Mr. JONES. You knew him, but I did not ask you about that.

Mr. HERBITS. Know his reputation?

Mr. JONES. Pardon?

Mr. HERBITS. I certainly did.

Mr. JONES. Was it good or bad?

Mr. HERBITS. I beg your pardon?

Mr. JONES. Was his reputation good or bad?

Mr. HERBITS. He had none.

Mr. JONES. Well, let's start all over again. Let's start all over again. You said he had no reputation. Did he have a reputation for truth and veracity?

Mr. HERBITS. Well, he has that reputation with me, sir, but I don't know what other people thought about him. I know that—

Mr. JONES. Now, Mr. Herbits, you are a lawyer and I am a lawyer. So let's get down to the meat and the coconut about the reputation of the fellow in the community for truth and veracity.

You say that—you made allegations that he had no reputation. He had a reputation either one way or the other. Do you know of his reputation?

Mr. HERBITS. Well, I know he had a reputation for being strictly unreliable.

Mr. JONES. Well, that is what I am asking you. And he was totally unreliable and you had known his reputation for some 20 years prior to the—

Mr. HERBITS. No; it developed as I went along. I didn't know it in the beginning but it developed over the years.

Mr. EDMONDSON. Will the gentleman yield?

Mr. JONES. Yes.

Mr. EDMONDSON. Just to get the record straight on the principals in this line of testimony, I would like to have the staff identify just what administration was responsible for Mr. Spagnoletti's employment by the State and what administration was responsible for Mr. Harney's.

Mr. JONES. Well, if the gentleman will just hold that until I get through, I just have a couple of questions that I want to ask Mr. Herbits.

You knew the reputation of Mr. Harney when he called on you that time?

Mr. HERBITS. That's right.

Mr. JONES. And you knew by reputation that he was not trustworthy?

Mr. HERBITS. That's right.

Mr. JONES. And, therefore, you did not let him engage you or go beyond the speculation as to what part you could play in any mystery that he would manufacture with the State or anybody else?

Mr. HERBITS. Well, I considered his statement to me as part of a joke, because I didn't think he was serious when he offered it.

Mr. JONES. And so, had it been serious, you would still have given him the same answer that you gave him?

Mr. HERBITS. I definitely would.

Mr. JONES. Considering the source from which it was originating?

Mr. HERBITS. That's right.

Mr. JONES. And so for that reason Mr. Harney, in your opinion, was not fit, capable, nor experienced to take on the job——

Mr. HERBITS. That's right.

Mr. JONES. In occupying the position, the high position, that he had in the State administration as far as the acquisition of the property was concerned to the interest of the Commonwealth of Massachusetts?

Mr. HERBITS. That's right, sir.

Mr. JONES. Thank you.

Mr. BLATNIK. Any other questions?

Mr. EDMONDSON. Yes. Could we have, for the record, when Mr. Spagnoletti was employed and by whom, as well as——

Mr. BLATNIK. I do not think the witness would know. Thank you very much, Mr. Herbits——

Mr. SCHERER. Before you finish, I want to ask him a couple of questions. Go ahead and finish your inquiry.

Mr. EDMONDSON. I was addressing that to the staff, really.

Mr. SCHERER. Well, I know.

Mr. MAY. Congressman, Orlando Spagnoletti became employed with the department of public works on December 8, 1953.

We interviewed Mr. Spagnoletti, and he told us that when he wanted to go to work for the department of public works he went to see Gov. Christian Herter.

Governor Herter sent him to then Commissioner John Volpe, who put him to work in the right-of-way department of the department of public works.

Mr. Harney went to work in August of 1958. He told us that he had a friend named Edmund Sheridan, who was then in the department of public works. He had known Mr. Sheridan for 31 years and his application for employment got, and I quote Mr. Harney, "the

blessing" of Ed Sheridan and he was put on it in the right-of-way Department.

Mr. BLATNIK. Mr. Scherer.

Mr. HERBITS. Is the committee through?

Mr. SCHERER. No. I would like to pursue the questions I started to ask you before.

You testified that even if you could recall at this time the names of the men whom Harney told you the money would have to be split with you would not tell the committee. You told us that.

Mr. HERBITS. I said that I, in talking to the investigator, I told him at that time I didn't know—I didn't know who they were but even if I knew who they were I wouldn't quote this man because I didn't consider him reliable, and I wouldn't take his word for anything he said.

Mr. SCHERER. Yes, but you understand, of course, you would be obligated, if you could remember those names, to tell the committee those names irrespective of your personal feeling as to the truth or veracity of Harney?

Mr. JONES. Mr. Scherer, I will say that, as a lawyer, if you cannot remember there is no compulsion in the world that the witness has to remember.

Mr. SCHERER. That is not what I said. You were not listening to my question. I understand that perfectly well. My question is, I think, clear on the record.

Mr. JONES. I was being facetious, Mr. Scherer.

Mr. SCHERER. Yes, all right.

Mr. BLATNIK. Are there any other questions?

Mr. SCHERER. No, I am not finished, because this is important, I think. When did you last remember the names of the individuals that he mentioned with whom this money had to be split?

Mr. HERBITS. Well, sir, I didn't remember it—I didn't register it in my mind, because I considered the whole thing as sort of a fantasy, because I didn't conceive—I couldn't conceive that he would be in the position that he was—

Mr. SCHERER. Well. You do know now, from what you have learned since, that it wasn't fantastic, that these things actually happened?

Do you know?

Mr. HERBITS. Well, I didn't—

Mr. SCHERER. Were any of the names that he mentioned to you familiar to you at that time?

Mr. HERBITS. I don't recall, sir.

Mr. SCHERER. You don't recall. The staff, of course, asked you when they called on you the names of the individuals, did they not?

Mr. HERBITS. I told them the same thing.

Mr. CRAMER. Just for the record, Mr. Chairman, could we have the staff identify—in that apparently Mr. Spagnoletti, or Mr. Harney, said that he had known Ed Sheridan for many years—who Mr. Sheridan is, for the record.

Mr. BLATNIK. Thank you very much.

Mr. MAY. Mr. Ed Sheridan became personnel director of the department of public works on February 20, 1957. In April 1958 his title was changed to administrative assistant to the commissioner.

He held that position at the time Mr. Harney became an employee of the department.

Mr. BLATNIK. The next witness is Mr. G. Gale Wisbach, Tiverton, R.I.

Mr. Wisbach, will you please raise your right hand.

Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WISBACH. I do.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Wisbach, at one time you were the owner of Gale Motors, Inc., the Dodge-Plymouth agency in Fall River, Mass.?

TESTIMONY OF G. GALE WISBACH, PRESIDENT GALE MOTORS, INC., FALL RIVER, MASS.

Mr. WISBACH. That is right, sir.

Mr. MAY. And you are still president today?

Mr. WISBACH. That is right.

Mr. MAY. Now, the Commonwealth of Massachusetts has taken a part of your company's property in connection with the Federal-aid highway program, is that true?

Mr. WISBACH. Yes.

Mr. MAY. And the company owned two business locations, one at 847 South Main Street, and the other at 245 Central Street in Fall River?

Mr. WISBACH. We rented the former and owned the latter.

Mr. MAY. And it was the property at 245 Central Street that was involved in the land taking?

Mr. WISBACH. Correct.

Mr. MAY. And that was a used-car lot consisting of 47,000 square feet?

Mr. WISBACH. That is right.

Mr. MAY. And it contained a building and other improvements?

Mr. WISBACH. That is correct.

Mr. MAY. The land was worth in the vicinity of \$35,000 in 1948?

Mr. WISBACH. Right.

Mr. MAY. And over a period of years improvements were made on the property?

Mr. WISBACH. Yes, indeed.

Mr. MAY. Do you recall that in July 1959, you were contacted by the Department of Public Works employees, John Little and Harvey Hamilton?

Mr. WISBACH. I do, sir.

Mr. MAY. Do you recall that they spoke to you at that time about a settlement for your property in the vicinity of some \$80,000?

Mr. WISBACH. That figure was mentioned, yes.

Mr. MAY. In July or August 1959, were you contacted by Mr. Frank Harney?

Mr. WISBACH. I was.

Mr. MAY. Did he give you a card at that time identifying himself?

Mr. WISBACH. He did, sir. His title at the time was negotiator, Right-of-Way Division.

Mr. MAY. Mr. Chairman, I think I should explain at this time that this is the title "negotiator," or civil service grade, and many people within the Department Right-of-Way Department, would work there with that job title "negotiator," but they wouldn't necessarily negotiate with the property owner, their functions might be something other than that. As a matter of fact, at this particular time in July and August 1959, Mr. Harney was actually doing the work of what is called the preliminary interviewer, he was a person sent out initially by the Department to contact the property owner and to check the registry and gather certain preliminary data that might be of help later to the departmental appraiser when he did his job.

Mr. Wisbach, what did Mr. Harney have to say on his first visit, do you recall?

Mr. WISBACH. Well, he made himself acquainted with me as a man that I would have to deal with in the preparation, let us say, or the gathering of information on the cost of this property, its improvement, and as far as I was concerned, he was the Commonwealth of Massachusetts, and any information I could provide for him could help in obtaining the correct value of the property. He tried at this first visit to see what I thought the property was worth.

Mr. MAY. Did he ask you what you thought the property was worth, what it should bring?

Mr. WISBACH. Yes, he did several times, and I did not answer the question.

Mr. MAY. Mr. Harney made some visits to you?

Mr. WISBACH. Yes, many visits.

Mr. MAY. On one of those occasions did you mention to him that you thought the property might be worth some \$300,000?

Mr. WISBACH. On one of the later occasions, yes.

Mr. MAY. And did he express his thoughts on that scale, did he say that you would be likely to get \$75,000?

Mr. WISBACH. Well, he didn't say \$75,000, he did say a 100, he said, "your thoughts on this are fantastic, and the figure that I talked about some months ago of around 100 is more nearly like it."

Mr. MAY. So Mr. Harney was talking in the range of perhaps \$100,000?

Mr. WISBACH. Correct.

Mr. MAY. There came a time when Mr. Harney came to your office and closed the door and discussed other matters. Would you relate to the subcommittee what took place on that occasion?

Mr. WISBACH. I don't recall the date of this occasion, but we had had several contacts and discussions. And in this particular instance he said, "Well, I think we have got things pretty well in hand now. I have got the information on what the property should be worth. I have been at several other places in the city." And he said, "In order for you to obtain very, very fair value, and a quick settlement, I know you need a quick settlement, because you are in the automobile business, and automobile dealers always need money, so I think maybe I can be of a little help to you."

He said, "So in order to accomplish this thing the way you would like to, we are going to have to have a good attorney. Do you have any such person?"

I said, "No, we have a corporation attorney, but none of us have ever become involved in land taking, so I wouldn't say that we did."

So he said, "Well, I will get the name of a man for you. And I would suggest that you make an appointment and talk to him."

So I don't know just how soon after that, but one day I came back to the office, and on the desk was the name of an attorney in Boston whom I was to contact.

Mr. MAY. In that prior visit, Mr. Wisbach, did Mr. Harney indicate to you that he was going to turn in his report for a figure of some \$223,000?

Mr. WISBACH. Yes, he did.

Mr. MAY. And did he indicate that his figure was not solid but somewhat flexible?

Mr. WISBACH. Correct. He said, "This is what I am going to come up with, and of course it can be improved upon. I don't think it will be cut."

Mr. MAY. Now, you mentioned that Mr. Harney left on another occasion the name of an attorney?

Mr. WISBACH. Yes, sir.

Mr. MAY. What was the attorney's name?

Mr. WISBACH. I think Mr. John Dwyer, of Beacon Street.

Mr. MAY. Did Mr. Harney leave you a telephone number?

Mr. WISBACH. He did. And as I recall, there was some little time that went along after that, perhaps a week, in which I had done nothing about it. And I got another call, a visit, I don't remember which, and Mr. Harney said, "Well, did you get my information? And what are you going to do?" And so on and so forth.

And I subsequently did make an appointment with Mr. Dwyer, and I discussed this situation with him.

Mr. MAY. Mr. Harney asked you, "Are you going to see this fellow or not?"

Mr. WISBACH. That is right; he did.

Mr. MAY. Here you were getting a little prodding from Mr. Harney?

Mr. WISBACH. Yes; I would call it that.

Mr. MAY. Did you make an appointment with Mr. Dwyer?

Mr. WISBACH. I did.

Mr. MAY. And you went to his office?

Mr. WISBACH. Correct.

Mr. MAY. What took place on that occasion?

Mr. WISBACH. I introduced myself to Mr. Dwyer and said that I was the gentleman that Mr. Harney had referred to him to discuss the land-taking case. And I sat down. And he said, "Well, where is this property, at Lowell, or Lawrence, or some other part of the State?"

I said, "No, no indeed; this is Fall River."

And it appeared to me that he wasn't too familiar with the situation.

And there was some other discussion as to what this property might be worth. And I asked the gentleman, "Could you handle this for us?"

And he said, "In these cases you have to have experienced people represent you; you have to have people who know how these things are handled and through whose hands they go, and you just have

to know these things and be able to handle them to be able to get a very fair settlement or a quick settlement."

Mr. MAY. Did you tell Mr. Dwyer that Harney mentioned the figure of \$223,000?

Mr. WISBACH. I know I told him that.

Mr. MAY. Did you ask Mr. Dwyer how much his fee would be?

Mr. WISBACH. I asked Mr. Dwyer the question, and he said our fee would be 25 percent.

So I said 25 percent of what?

"Twenty-five percent of whatever we collect."

"This sounds very strange," I said, "because we don't know yet what the Commonwealth may offer, and it may be perfectly satisfactory without any argument."

He said, "Well, what would you settle for; what do you think the story would be?"

And I said, "Well, since we are talking about percentages, and so on, that I don't understand, we would consider \$270,000 net as satisfactory."

Mr. MAY. In other words, you told Mr. Dwyer you wanted \$270,000 net?

Mr. WISBACH. Correct.

Mr. MAY. Was that kind of an optimistic figure on your part?

Mr. WISBACH. Well, it seemed so to other people, but we had an appraisal, which is in our file, for more money than that.

Mr. MAY. Did Mr. Dwyer ask you if you would retain him in case the matter went to court?

Mr. WISBACH. Yes. He said, "Well, suppose we have to go to court on this, would we represent you at that time?"

And I said, "No, indeed not; we have our own corporation attorney, and if it becomes a matter of a court case, our own corporation attorney will handle it."

Mr. MAY. Actually after discussing matters with Mr. Harney you had retained an appraiser of your own who appraised the property; is that right?

Mr. WISBACH. I would say within the first month after I talked to Mr. Harney when he mentioned on the sidewalk a figure of some \$100,000, I immediately went and engaged an appraiser.

Mr. MAY. Do you recall what the fee was?

Mr. WISBACH. For this appraisal?

Mr. MAY. The appraisal.

Mr. WISBACH. \$1,500.

Mr. MAY. Do you recall what the appraisal figure was?

Mr. WISBACH. It was either \$320,000 or \$370,000, I have forgotten.

Mr. MAY. \$370,000; Mr. Wisbach, would you agree that that is an optimistic figure?

Mr. WISBACH. Yes.

Mr. MAY. How long did the meeting last between you and Mr. Dwyer?

Mr. WISBACH. I would say 20 minutes.

Mr. MAY. How was it left with Mr. Dwyer.

Mr. WISBACH. I made it very clear that this was an exploratory conversation, and that I had not engaged counsel, that it was my impression that he wasn't too familiar even with the locality of that

property, so I wanted to be very sure that I didn't leave any impression that he was to proceed.

He said, "Well, I will look into things a little bit, and I will hear from you."

Mr. MAY. After you returned home after visiting Mr. Dwyer, a short time later did you receive another visit from Mr. Frank Harney?

Mr. WISBACH. I certainly did.

Mr. MAY. And what happened on that occasion.

Mr. WISBACH. On that occasion Mr. Harney said, "Gale, what happened to you?"

And I said, "Why?"

He said, "Well, we had this thing all set up on Boston, and you failed me."

And my answer to that was, "Well, Mr. Harney, I don't know what we had set up, but any time you send me to an attorney that is supposed to be able to help me and he doesn't even know what part of the State I am from, I don't think I have made a mistake, I think you have."

He said, "well, I am very disappointed in this. Everything I have ever set up before has gone along very well."

Mr. BLATNIK. What did he mean by the words "everything I have ever set up before?"

Mr. WISBACH. Well, apparently, I gathered from that that other arrangements of sending people to attorneys and what not had been successful, that is the only thing I could infer from that.

Mr. BLATNIK. In other words, he was setting up the arrangements, so it was not so important that you have an attorney of competence and experience in the real estate field, is that your impression?

Mr. WISBACH. That was definitely my impression.

Mr. MAY. Did Mr. Harney mention that he was disappointed?

Mr. WISBACH. He was very much disappointed. And he said, "Well, I don't know, I will have to see the boys at the Boston Club next week, and I will get in touch with them."

Mr. CRAMER. Boys at what club?

Mr. WISBACH. The boys at the Boston Club.

Mr. CRAMER. What is that?

Mr. WISBACH. I honestly don't know. There are other people here that I am sure that do.

Mr. SCHERER. Does the staff know what the Boston Club is?

Mr. CRAMER. May I suggest that you find out by inquiry what the Boston Club is?

Mr. MAY. The Boston Club, as I understand it, is no longer in existence. The Boston Club was a club where gentlemen belonged and they gathered.

Mr. SCHERER. I assumed that.

Mr. SCHWENGEL. For what purpose?

Mr. MAY. Fraternization, I believe, Congressman. We didn't investigate the Boston Club.

Mr. SCHERER. Was that where all the boys cut up the profit?

Mr. MAY. I don't know about that, Congressman.

Mr. SCHERER. That is a good answer.

Mr. CRAMER. What was the impression you got, that he was going back to the boys in the Boston Club and telling them that you were not going to employ Mr. Dwyer, is that it?

Mr. WISBACH. That is right.

Mr. CRAMER. And the Boston Club was in Boston?

Mr. WISBACH. I think it is right near the statehouse, although I am informed now that it is not in existence. My impression was that it was definitely a political gathering spot.

Mr. GRAY. How far is Fall River from Boston?

Mr. WISBACH. Fifty miles.

Mr. MAY. I understood that some members of both political parties have belonged to the Boston Club.

Mr. SCHERER. I imagined that.

Mr. CRAMER. That is not the backroom of the capitol where they have all the operations?

Mr. WISBACH. I am sorry, I am not acquainted with that.

Mr. MAY. Mr. Wisbach, did you tell Mr. Harney that Mr. Dwyer had indicated to you that he wanted a fee of 20 percent of all you received?

Mr. WISBACH. Twenty-five percent, certainly.

Mr. MAY. Twenty-five percent. What did Mr. Harney say about that?

Mr. WISBACH. Well, he said, "That isn't right, he shouldn't have done that"—in this respect, though, actually it should have been a percentage of anything over what we would be satisfied with.

Mr. MAY. Here we have a representative of the department of public works referring the property owner to the attorney.

Mr. WISBACH. Definitely.

Mr. MAY. And now sitting down with the property owner criticizing the fee that the attorney had suggested.

Mr. WISBACH. Correct.

Mr. MAY. Did Mr. Harney have some ideas of his own about what a more reasonable fee would be?

Mr. WISBACH. At a later date he came back with a proposition that—well, it was either 50 percent over \$223,000, or it was a smaller percentage, but over this \$223,000.

Mr. SCHERER. Harney was right in that case?

Mr. MAY. Was it a fee of 50 percent of all over \$200,000, or 75 percent of all over \$223,000; does that refresh your recollection?

Mr. WISBACH. That could be it; yes, sir.

Mr. MAY. And when he was talking values to you he was talking in terms of \$100,000?

Mr. WISBACH. That was the first statement that he made to me, \$100,000.

Mr. MAY. Now, did you later receive a letter from Mr. Dwyer dated November 19, 1959, relating to the land-taking?

Mr. WISBACH. I did.

Mr. MAY. And in essence, Mr. Dwyer told you by letter at that time that he was sufficiently familiar with the situation to talk specifically about the terms under which he would be willing to handle the matter, and he asked you if you were still interested in retaining him, to contact his office for an appointment; is that about the essence of the letter?

Mr. WISBACH. That is correct.

Mr. MAY. Now, you never answered that letter?

Mr. WISBACH. Oh, no.

Mr. MAY. After you received the letter and after sufficient time had passed, a reasonable time had passed allowing you to answer it if you so desired, did Mr. Harney come back to see you?

Mr. WISBACH. He definitely did.

Mr. MAY. What happened then?

Mr. WISBACH. He said, "Well, did you receive another letter from Mr. Dwyer?"

I said, "Yes, I did."

And he said, "What did he have to say?"

"Well," I said, "he said he was now sufficiently acquainted with the matter to discuss it further with me."

He said, "Well, when are you going to see him?"

I said, "Well, I am never going to see him."

"Well, what was the matter, what went wrong? We got the figures straightened out."

And I said, "Well, I don't really think so."

He said, "Well, I don't understand, all of a sudden you feel this way."

And I said, "Well, I think that this has been a little mishandled all along the line. I took your letter and I sent it to our corporation attorney, and there it stays, and if there is anything further to be done on it, he will reply."

Mr. MAY. What did Mr. Harney say?

Mr. WISBACH. Well, Mr. Harney said, "Well, I think you are a fool." He said, "this could have been a very nice settlement for you. But we are all friends, and good luck."

Mr. MAY. Now, in your talks with Mr. Harney did he ever mention appraisals, how appraisals could be handled?

Mr. WISBACH. Oh, certainly.

Mr. MAY. What did he have to say along that line?

Mr. WISBACH. I can't tell you exactly, but I got the impression, and a very definite impression, that the reason he was in a position to obtain for us a very fair or quick settlement was that he had connections and knew how these things were handled, and that the appraisal—of course, he informed me the official way these things were handled and, there would be one appraisal from the department and two or three outside appraisals. And he said: "We can be very certain that we will get the outside appraisals that we want."

Mr. BLATNIK. Will you repeat that? Mr. Harney said that he felt certain—

Mr. WISBACH. Or the department, or somebody, whoever it was that was involved, could come up with appraisals that we want to substantiate, in other words, a higher value.

Mr. MAY. Did he also mention what would happen if the appraisers did not come in with the figures that were wanted?

Mr. WISBACH. Well, I got the impression that this appraisal business was quite lucrative, and that there were several people in the Commonwealth who would like to be appraisers and that they were chosen for several reasons, one of which was that they could come back with the type of answers that they were supposed to come back with.

Mr. MAY. And if they didn't did Mr. Harney suggest what would happen?

Mr. WISBACH. Well, they just wouldn't get as much work, or any more.

Mr. MAY. If they did not come in with the right amount they would not be retained on the list, they would not get any additional appraisal work, is that right?

Mr. WISBACH. That is correct.

Mr. MAY. And then you had nothing whatever to do with Mr. Harney after that?

Mr. WISBACH. No, not at all.

Mr. MAY. Your case, the land-taking case, is still a pending matter, is it not?

Mr. WISBACH. Yes, it is not settled.

Mr. MAY. You did eventually receive an offer by the State last August, did you not?

Mr. WISBACH. I believe it was in October, Mr. May.

Mr. MAY. October?

Mr. WISBACH. I believe so.

Mr. MAY. And the State offered you how much for your property?

Mr. WISBACH. \$140,000.

Mr. MAY. \$140,000.

Mr. SCHERER. You were up to 220?

Mr. MAY. I might mention, Congressman, that after we began to investigate this matter the State took another look at it, and another appraisal was made in 1961, and this figure comes about as a result of those new appraisals. We don't want to talk about the appraisal, this is a pending matter.

Mr. SCHERER. I was just trying to refresh my recollection. Am I correct that the witness said that at one time Harney told him that he was going to recommend \$223,000?

Mr. MAY. That is correct.

Mr. CRAMER. He turned it in.

Mr. MAY. Did he refuse the offer the State made?

Mr. WISBACH. We filed suit, which is the same thing.

Mr. MAY. I want to thank you very much, Mr. Wisbach, for being of considerable help.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Mr. Wisbach, was the approach made to you by Mr. Harney clearly an improper one, in your judgment?

Mr. WISBACH. In the light of after events.

Mr. WRIGHT. At the time did it seem improper?

Mr. WISBACH. At first, no, I had no reason to believe one way or the other.

Mr. WRIGHT. When he gave you the distinct impression that he could so arrange it that the appraisers would come up with the appraisals you wanted, didn't it occur to you that this was improper, he being a representative of the State of Massachusetts?

Mr. WISBACH. He created the same impression with me that he has with several other people, that regardless of what he said, I wouldn't believe him. And I never for one moment believed that he could do anything for me.

Mr. WRIGHT. You just lost all confidence in the man Harney, and didn't have any confidence in anything he said?

Mr. WISBACH. That is exactly correct.

Mr. WRIGHT. Did you at any time report this to anybody in the State of Massachusetts who had any responsibility with the highway department?

Mr. WISBACH. No, I did not. Nothing was of a definite nature. We hadn't gotten into anything. He made an appraisal and we had made an appraisal, and I confidently tell you that I had no idea when this thing started out that we would ever settle it.

Mr. WRIGHT. You just didn't feel that Harney was a man of the stature with whom you wanted to deal?

Mr. WISBACH. After a point, I will be very honest with you, I felt that way long before we discontinued any relations, but I was willing to see what was happening, because in our own minds we had already made plans, which is what has happened.

Mr. WRIGHT. You mentioned earlier that you had advised Harney that the matter was in the files of your corporation attorney. Did you discuss with your corporation attorney the approaches that had been made to you by Harney on your visit to Dwyer?

Mr. WISBACH. Yes, I did.

Mr. WRIGHT. Your corporation attorney advised, did he, to proceed in a legal manner and not have any further negotiations?

Mr. WISBACH. I questioned him before I went to see Mr. Dwyer.

Mr. WRIGHT. You did?

Mr. WISBACH. Definitely. And we had the feeling right along that this wasn't quite the thing to do. But he said, "you just have a discussion, and let me know what happens." And it was a question of when we would start talking, but knowing right along that we would.

Mr. WRIGHT. Did it seem unusual to you that a representative of the State of Massachusetts would be attempting to promote the business of a private attorney?

Mr. WISBACH. It did seem unusual. But as I said before, we had never become involved in any land-taking situations or situations involving the Commonwealth in any way, so I didn't really know.

Mr. Cook. During this period of time I believe that counsel for the committee has mentioned that Harney actually was not a negotiator on behalf of the State highway department. Did any other representative of the highway department or public works department come to you and represent themselves as a negotiator in an attempt to negotiate a final settlement on this proposition with you?

Mr. WISBACH. No sir, we never sat down at any moment to negotiate this property.

Mr. Cook. And no one other than Mr. Harney attempted to negotiate with you?

Mr. WISBACH. No, sir.

Mr. Cook. Over how long a period of time did your association with Mr. Harney take place?

Mr. WISBACH. Probably 6 months.

Mr. Cook. Six months. Did you understand at any one time during that 6 months period that a figure had been submitted by Harney for an appraisal of your property, had actually been submitted?

Mr. WISBACH. Yes, indeed.

Mr. Cook. But at no time did any other representative of the highway department come to you and attempt to negotiate with you?

Mr. WISBACH. No, sir.

Mr. MAY. It might clarify it to point out that this past October Harney was negotiating, and the offer was made probably to your attorney, Mr. Wisbach, by another negotiator for the department.

Mr. Cook. Am I correct, Mr. May, that at the time, though, that Mr. Harney was talking to Mr. Wisbach he was not a negotiator?

Mr. MAY. That is true. And most important, Mr. Harney all through this period was simply a preliminary interviewer, never a negotiator.

Mr. Cook. Under the procedures of Massachusetts, wasn't it logical then that a negotiator would follow up this original preliminary man and seek to negotiate these very issues that Mr. Harney was negotiating?

Mr. MAY. Very true.

Mr. WISBACH. Of course, the title was a little misleading to me.

Mr. MAY. That is true. The property owners don't understand that, these people walk around with the title "negotiator," they identify themselves as a "negotiator," the property owner doesn't know that man is simply a preliminary interviewer, he has nothing whatever to do with talking about the value of the property that is negotiated toward settlement.

Mr. Cook. I understand that from the point of view of Mr. Wisbach. But certainly something must be rotten in Denmark when 6 months have elapsed after the preliminary man has been around and no one in the department has attempted to negotiate.

Mr. MAY. That is certainly unusual. The preliminary man goes out initially in the very early stages, gathers up the preliminary data, checks the register and gathers some facts from the property owner, gathers the preliminary data for the use of the departmental appraiser later. Of course, thereafter, when they get around to it, the departmental appraiser will go and make an appraisal of the property, and thereafter fee appraisers are appointed. So this does take a considerable amount of time in the normal course of events.

Mr. Cook. Generally speaking, Mr. Harney, in the position which he did occupy, did have a little time to play this game that he attempted to play with Mr. Wisbach.

Mr. CRAMER. Counsel, why do they call these information gatherers "negotiators"? I can see where it would be very misleading. Why do they do that?

Mr. MAY. It is my understanding that they don't have a civil service position for preliminary interviewers. For example, the department will give many of the employees within the department this one title, "negotiator." Some of the negotiators will go out and take pictures, other negotiators will function in the realm of making drawings of the buildings and do this preliminary work.

Mr. CRAMER. As I gather from his testimony, some of them act as solicitors, too.

Did Harney at any time mention to you any names of anybody at the Boston Club, for instance, that he was going to talk to about this situation?

Mr. WISBACH. No, sir; he didn't.

Mr. CRAMER. Or anybody at the State House, or anything like that that he was going to talk to about this situation?

Mr. WISBACH. No, sir.

Mr. CRAMER. Or any of these appraisers that he said that he could get the figures out of that he wanted?

Mr. WISBACH. I don't know whether he knew who they were personally or not, but he didn't mention any names. The general impression was that he was well connected politically.

Mr. CRAMER. And that he had done this for some period of time, and he had handled other situations successfully?

Mr. WISBACH. Apparently so. But I was one of the first ones he visited in the Fall River area, and what he had done before that I didn't know.

Mr. SCHERER. What year was this?

Mr. WISBACH. 1959.

Mr. BLATNIK. Thank you very much, Mr. Wisbach. The Chair thanks you on behalf of the committee for a very helpful and forthright statement.

Our last two witnesses the Chair will call simultaneously, since the testimony will be related, Mr. John B. Dwyer, attorney, Medford, Mass., and Mr. Joseph H. Elcock, Jr., attorney, Wellesley Hills, Mass.

Messrs. Dwyer and Elcock, please take the witness stand and raise your right hands.

Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DWYER. I do.

Mr. ELCOCK. I do.

Mr. BLATNIK. Would you please be seated.

Mr. MAY. Mr. Dwyer, you are an attorney?

**TESTIMONY OF JOHN D. DWYER, ATTORNEY, MEDFORD, MASS.;
AND JOSEPH H. ELCOCK, JR., ATTORNEY, WELLESLEY HILLS,
MASS.**

Mr. DWYER. Yes; I am.

Mr. MAY. And what is your full name?

Mr. DWYER. John D. Dwyer.

Mr. MAY. What is your home address?

Mr. DWYER. 21 Bradlee Road, Medford.

Mr. MAY. And you have an office in Boston?

Mr. DWYER. I do, on 3 Park Street.

Mr. MAY. 3 Park Street?

Mr. DWYER. Yes.

Mr. MAY. How long have you been located in that office?

Mr. DWYER. Approximately 9 or 10 months.

Mr. MAY. What was your address prior to that?

Mr. DWYER. Prior to that I was at 8 Beacon Street.

Mr. MAY. Thank you.

Mr. Elcock, what is your full name?

Mr. ELCOCK. Joseph H. Elcock, Jr.

Mr. MAY. And you are an attorney?

Mr. ELCOCK. I am.

Mr. MAY. Where is your office located?

Mr. ELCOCK. My office is at 3 Park Street, Boston. Prior to that time it was at 8 Beacon Street, Boston.

Mr. MAY. And where do you reside, Mr. Elcock?

Mr. ELCOCK. 113 Bristol Road, Wellesley Hills, Mass.

Mr. MAY. Mr. Elcock, are you a member of the Massachusetts Toll Road Authority?

Mr. ELCOCK. Yes; I am.

Mr. MAY. And how long have you been functioning in that capacity?

Mr. ELCOCK. A little over a year.

Mr. MAY. Were you formerly assistant attorney general for Massachusetts?

Mr. ELCOCK. I was appointed assistant attorney general in 1953, and I remained there until the end of 1960.

Mr. MAY. Thank you. Mr. Elcock, I would like to establish very early on the record the sort of relationship that you did have with Mr. Dwyer. Would you explain that, please?

Mr. ELCOCK. While I was in the attorney general's office I kept my law business going. I kept my office open. I had a secretary there in the library. During that time I had other attorneys who might come in and rent space and help reduce the rent. And Mr. Dwyer, for a period of a few months, I believe the first part of 1959, came into my office on that relationship.

Mr. MAY. You and Mr. Dwyer had never practiced law together as a partnership?

Mr. ELCOCK. No, we have never had any such relationship. He has had his business, and I have had my business. We have shared rent of office space as far as that goes. As of last year, since we have moved to Park Street, Mr. Dwyer has worked with me on some of the cases that I have, if I don't have time myself.

Mr. MAY. We have already heard some testimony with respect to Mr. Dwyer. During the period already discussed, the relationship was such that your cases were your cases, and Mr. Dwyer's cases were his cases?

Mr. ELCOCK. That is correct, Mr. May.

Mr. MAY. Now, you being the more experienced attorney, I suppose it would not be uncommon for Mr. Dwyer, a younger, less experienced attorney, to seek your advice and help in certain matters?

Mr. ELCOCK. Yes, he did, if matters came into the office relating to questions of law, or things of that sort, he would consult me on occasions concerning the problems they represented to him.

Mr. MAY. There would be occasions when you wouldn't see Mr. Dwyer for weeks at a time?

Mr. ELCOCK. Yes. It was actually during that period in the attorney general's office, and I would say 90 to 95 percent of my time was taken up with Commonwealth business. I would get over in my office at least once a week, I would call there every day, and if something came up I could get across the street to my office, because I am not located far from the State house.

But basically I was in the State house, and he was separated from me in another building.

Mr. MAY. Mr. Dwyer, when we contacted you many months ago you made available to us the original notes which you had made during the transpiring of certain events, is that right?

Mr. DWYER. That is correct.

Mr. MAY. Mr. Dwyer, I have your original notes here. Also I have made up copies so that I could arrange them chronologically. And I have identified them by page number to help us with our testimony today. I will provide to you copies of your original notes. Would you look at them and identify them, please?

Mr. DWYER. These appear—I can't tell that they are every page, but I assume that every page of my original notes is in here.

Mr. MAY. That will become apparent as we move along, Mr. Dwyer.

Now, we have already heard testimony from Wisbach. And he has told the subcommittee that he was contacted by Mr. Frank Harney, who was at that time an employee of the department of public works, and Mr. Harney suggested that Mr. Wisbach get in touch with you to help him with his land taking.

About October of 1959 did your office receive a call from Mr. Harney, do you recall?

Mr. DWYER. Yes, it did.

Mr. MAY. Now, did you know Mr. Harney as of that moment?

Mr. DWYER. No, I did not.

Mr. MAY. Had you met Mr. Harney prior to that time, do you recall?

Mr. DWYER. I had not, at least not to my recollection.

Mr. MAY. Your office also received another call about that time indicating that a Mr. Wisbach was going to come up to your office for an appointment to discuss the land taking, is that right?

Mr. DWYER. That is correct.

Mr. MAY. What did you do when you were alerted to the fact that a potential client was going to come to you with respect to land taking?

Mr. DWYER. Well, never having had a land damage case before this matter, or since, for that matter, I got out a general book and I wrote down a checklist of the general areas of questions which one would ask of a potential client in a land damage situation, which general notes appear as the first page of this photostat.

Mr. MAY. Yes, the first page of your notes reflects "Land damage checklist, chapter 79." Is that chapter 79—

Mr. DWYER. Of the Massachusetts general laws, that has to do with eminent domain.

Mr. MAY. I see. "Name of client." "Name of all owners and mortgagees," and so forth. And I notice the last item is the fee, is that right?

Mr. DWYER. That is correct.

Mr. MAY. Now, on the second page of your notes that you have in front of you I see certain notations, the first one being "Wisbach, G. Gale, sole owner of the corporation."

Are these notes that you made during your interview with Mr. Wisbach?

Mr. DWYER. These are the notes that I made during my interview with Mr. Wisbach.

Mr. MAY. Now, after your talk with Mr. Wisbach, did you record in a note the significant facts and address the note to, as you see on the first page, "Joe"?

Mr. DWYER. Yes, I did.

Mr. MAY. Who is "Joe"?

Mr. DWYER. "Joe" is Mr. Elcock.

Mr. MAY. Now, you were not necessarily sending this note to Mr. Elcock, were you?

Mr. DWYER. Please?

Mr. MAY. Were you sending this note to Mr. Elcock?

Mr. DWYER. No, I was not.

Mr. MAY. This is simply a summation to help you in your discussions thereafter with Mr. Elcock, if you had them?

Mr. DWYER. That is correct.

Mr. MAY. Mr. Elcock, do you recall Mr. Dwyer discussing these things with you?

Mr. ELCOCK. He discussed one point with me initially. He said that he had some sort of a land case and wanted to find out how to charge a fee. And I believe I told him that ordinarily a sum equal to a percentage of the amount recovered would be the ordinary method of charging.

Mr. MAY. I would like to stress this point, if true, that these are detailed notes, but you, Mr. Elcock, were not aware of every single detail in all of these notes, is that true?

Mr. ELCOCK. That is correct.

Mr. MAY. Mr. Dwyer, would you read the notes on what is marked "page 3" there?

Mr. DWYER. Yes.

This is my summary of the meeting with Mr. Wisbach:

Joe. Our potential client's name is G. Gale Wisbach, sole stockholder in the Dodge-Plymouth Corp. in Fall River, Mass. Business telephone is Osborne 3-5826.

The corporation has two business locations, a showroom at 847 South Main Street will not be taken. The other piece at 245 Center Street is to be taken. The size of the latter is 47,000 square feet.

The property is to be taken for Interstate Highway 195. The representative of the taking authority is Mr. Harney.

Harney has offered \$223,000. He—

Mr. Wisbach—

needs \$270,000 net. He also hopes that he will not have to move out immediately after the taking, for, as he understands things, the viaduct is to be built on the edge of the property long before the remainder of the land is used.

If I can't settle the case, he will employ four other lawyers to try this matter. He says he really doesn't know why he is here. His appraisers will probably say the property is worth \$300,000.

Mr. MAY. That is the end of your notes?

Mr. DWYER. That is the end of my notes.

Mr. MAY. Mr. Dwyer, did you tell Mr. Wisbach at that meeting that your fee would be perhaps 25 percent of all the money received?

Mr. DWYER. Mr. May, at that meeting, which is the only meeting that I had with Mr. Wisbach, the subject of fee never came up. As Mr. Wisbach very correctly indicates, I was not aware of his address, all I knew was his name, and the fact that he was coming to me on a land damage case. There was no discussion of fee. He put it to me that he was coming to my office, that he had a \$223,000 offer, he needed \$270,000, and that he was coming to me to give me a case if I were to take it on some basis of a fee arrangement giving him \$270,000 net. On the basis of this less than tremendously appealing proposal, I said nothing, other than what Mr. Wisbach correctly stated, namely, that I would look into this matter and check with him. And as Mr. Elcock indicates, I

checked with him to find out how you do charge in the case of this nature. When I say I was an amateur, I was very strictly an amateur indeed in this particular subject.

MR. MAY. You were concerned about what a reasonable fee in the matter would be?

MR. DWYER. That is correct. At this point—I agree, by the way, substantially with everything Mr. Wisbach said—apparently this indicates that other than the fact that I proposed nothing to him on fee, and that I didn't know enough to propose, and he was the one who had the proposition, which proposition is indicated in the notes which I turned over to the investigator.

MR. CRAMER. When did you talk to Mr. Elcock about these—what arrangements are usually made in this type of case—before or after Mr. Wisbach?

MR. DWYER. No, after this, some time after this. At this point all I knew was that a Mr. Wisbach was coming to me on a land damage case, and I made the abbreviated checklist shown on page 1 of these notes.

MR. MAY. And Mr. Harney at that time told you he was coming to see you; is that right?

MR. DWYER. I had never talked to Mr. Harney, I didn't know who Mr. Harney was. All I knew was that—and again I cannot be exactly sure of the time—this happened in 1959, but either just before or—possibly just before this a call came to my office from a Frank Harney, a message was taken by my secretary. I had never met or to my knowledge ever heard of Mr. Harney.

MR. MAY. A message to what effect?

MR. DWYER. A Mr. Frank Harney called, all I knew was the name, I cannot even be sure that I got the name prior to this. The name Frank Harney, to my recollection, first came up when this Mr. Wisbach indicated to me, as my notes show, that he had gotten an offer from Mr. Harney, the representative of the taking authority.

MR. MAY. How long had you been practicing law at that time?

MR. DWYER. Since then?

MR. MAY. No, at that time.

MR. DWYER. I graduated in law school in 1956. I spent a year as a supreme court clerk, that is, the State supreme court, Judge Ronan. I then spent a year and a half until early 1959 in a trial firm, Parker, Coulter, Daly & White by name. So I had then been on my own for approximately 9 or 10 months, 3 years, plus—

MR. SCHWENGEL. Where did you go to school?

MR. DWYER. I went to Harvard College and to the Boston College Law School.

MR. BALDWIN. Mr. Dwyer, were you contacted by Mr. Harney at a time after you discussed this matter with Mr. Wisbach?

MR. DWYER. Yes, I was, sir.

MR. BALDWIN. And what was the gist of your conversation with Mr. Harney at that time?

MR. MAY. I would like to say, Congressman, that Mr. Dwyer kept excellent notes, and if you follow his notes through to the end, it presents the picture most clearly. And perhaps we can move along in that fashion.

MR. BALDWIN. Fine.

Mr. CRAMER. It is difficult, counsel, to understand how this attorney, who was without any friendship at all or knowledge of Mr. Harney, and when he admits that he had never had any experience in land damage cases, and he had been practicing for only 9 months, and this was a case involving over \$400,000, it is difficult to understand how he happened to be the attorney that Mr. Harney recommended.

Mr. SCHERER. Perhaps that is what counsel is explaining. Were you going to clear this up for us?

Mr. MAY. I think perhaps the only person you can clear it up with absolutely is Mr. Harney, why he would select this attorney here.

Mr. SCHERER. Could Mr. Elcock explain it?

Mr. MAY. Mr. Elcock, did you know Mr. Harney as of this time?

Mr. ELCOCK. No, I did not; I had never heard of him.

Mr. SCHERER. You had nothing to do with referring Harney to the office?

Mr. ELCOCK. No, sir.

Mr. BLATNIK. Mr. May.

Mr. MAY. On your next page of notes, Mr. Dwyer, would you read that page, please?

Mr. DWYER. This is a note—you have a green copy of it written by my secretary dated October 15, 1959, saying:

Mr. Frank Harney, Jr., called to see if Mr. Wisbach has been in touch with your appointment. I said, yes.

Mr. Harney said he would drop in tomorrow to discuss the matter.

Mr. MAY. So that—

Mr. DWYER. He might have called before this, this is the first time that I know that I definitely called his name.

Mr. MAY. So on October 15, 1959, Harney wanted to know, had Mr. Wisbach been in, and he said he would drop in to see you tomorrow.

Mr. DWYER. That is correct.

Mr. MAY. Did he?

Mr. DWYER. Yes, he did.

Mr. MAY. What did Mr. Harney have to say at that time?

Mr. DWYER. Mr. Harney indicated that he had referred this Mr. Wisbach to me. He did not make it clear why he had referred Mr. Wisbach to me. He did, however—by the way, it seemed somewhat appropriate from my point of view to talk with him, for the simple reason that he was the man who was supposed to have offered this \$223,000 to my potential client, and he indicated in any event that he had referred this Mr. Wisbach to my office, and that was quite a favor he was doing me.

Mr. MAY. Did he identify himself?

Mr. DWYER. He identified himself as a supervisor of appraisers, or something to that effect, I don't know the precise words, other than that he was a person of responsibility sufficient to be able to make offers of money.

Mr. SCHERER. Could I interrupt here just a second? At this time, Mr. Elcock, you were an assistant attorney general for the State of Massachusetts; is that right?

Mr. ELCOCK. Yes, sir.

Mr. SCHERER. And you were renting space to Mr. Dwyer?

Mr. ELCOCK. That is right.

Mr. SCHERER. Had you ever referred any business to him to handle for you because your duties as attorney general consumed most of your time?

Mr. ELCOCK. No, sir.

Mr. SCHERER. No business. He handled no business for you?

Mr. ELCOCK. He might have answered a letter or two if I didn't happen to be in the office, but basically he didn't handle any case for me, no.

Mr. SCHERER. What type of work did you do for the attorney general?

Mr. ELCOCK. I worked on contracts and approved them as to form. I did trial work on several matters, and I did appeal work, and I did trial work in the Federal courts.

Mr. SCHERER. Did you do any right-of-way work?

Mr. ELCOCK. No, sir; that was handled by a separate division.

Mr. SCHERER. You say here that you did not know Harney?

Mr. ELCOCK. That is correct, yes, sir, I did not know him.

Mr. SCHERER. Did anybody approach you in the attorney general's office and ask you where such a matter like this could be referred?

Mr. ELCOCK. No, sir.

Mr. SCHERER. So Harney introduced himself as an appraiser or supervisor of appraisers within the department of public works. What else did Mr. Harney have to say?

Mr. DWYER. And Harney indicated to me that I had a pretty good case. This is a question in the sense that my potential client wanted \$270,000 net. But Mr. Harney indicated that I had a pretty good case, and he indicated to me that he had not made an offer.

Mr. SCHERER. Did you tell Mr. Harney that Mr. Wisbach had told you that he, Harney, had offered him \$223,000, but that Mr. Wisbach said he wanted \$270,000?

Mr. DWYER. Yes, I did.

Mr. SCHERER. What did Mr. Harney say about this?

Mr. DWYER. Mr. Harney said that John Little and Harvey Hamilton—whoever they are, I do not know—had an original interview on July 20, 1959, and all that Mr. Wisbach could think of then was \$80,000, and later this Mr. Harney told me, Mr. Wisbach said that Mr.—Mr. Harney said that Mr. Wisbach said that he would probably take a \$110,000 offer which had been suggested to him, Wisbach, by Harney.

Mr. MAY. So when you told Mr. Harney that Mr. Wisbach had said Harney had offered Wisbach \$223,000, and that Wisbach told you that he wanted \$270,000, did Mr. Harney become angry?

Mr. DWYER. I didn't reveal, by the way, to my recollection, precisely what figure Mr. Wisbach wanted, but he became angry when I did reveal to him that I understood that he had made a \$223,000 offer.

Mr. CRAMER. Who are these fellows Little and Hamilton?

Mr. DWYER. I do not know. This is what Mr. Harney told me.

Mr. MAY. John Little and Harvey Hamilton were representatives of the department of public works who had previously, prior to Harney's time, discussed matters with Mr. Wisbach in the normal course of events.

Mr. CRAMER. On the same property, the same matter?

Mr. MAY. Yes.

Mr. GRAY. Mr. Chairman, were these two gentlemen interviewers, or were they appraisers?

Mr. MAY. These two people were preliminary people also.

Mr. GRAY. They had the same status as Harney, right?

Mr. MAY. Pardon me. Hamilton was an appraiser, Congressman.

Mr. GRAY. He had authority to talk prices?

Mr. MAY. Yes, he did.

Mr. GRAY. Mr. Harney did not?

Mr. SCHERER. But had he talked to Wisbach before Harney came into the picture?

Mr. MAY. Yes.

Mr. SCHERER. I understood that Harney was the only man that had ever talked to Wisbach.

Mr. MAY. I think the only one who had made an offer.

Mr. CRAMER. What did Harney mean when he said "you have a pretty good case"; did he say anything further, did he say what was in the record, or what the appraisals indicated?

Mr. DWYER. He gave me—I was going to continue what he said—he then gave me information that he, Harney, thought the value of it was \$223,000.

Mr. CRAMER. So he told you what he thought the value was?

Mr. DWYER. Yes, he did.

Mr. CRAMER. Based on information he had acquired as a State employee, right?

Mr. DWYER. That is right. He gave me, as I said, a series of figures.

Mr. WRIGHT. Did I understand correctly, Mr. Dwyer, that Mr. Harney became angry at the point where you told him that Mr. Wisbach said he, Harney, had offered Mr. Wisbach \$223,000?

Mr. DWYER. That is correct.

Mr. WRIGHT. He became angry?

Mr. DWYER. That is right. And he said, in effect, "Why, at one time, he was thinking of \$80,000." And then later he indicated that he probably would have taken \$110,000 for this.

Mr. WRIGHT. Did he deny having made such an offer to Mr. Wisbach?

Mr. DWYER. Yes, he did. But he said he thought the value of it was \$223,000, but he denied having made such an offer.

Mr. WRIGHT. In that respect is it conceivable or does it seem likely to you that he may have been luring or attempting to lure Mr. Wisbach with the figure of \$223,000 if Mr. Wisbach were to do certain things, but that this, in his judgment, was not to be constituted as an offer on the part of the State, and he was angry that Mr. Wisbach so interpreted it?

Mr. DWYER. In retrospect two things suggest themselves to me: (1) That he was luring Mr. Wisbach into it, and (2) that he was eventually going to attempt to use my offer to somehow pressure or to rig appraisals. This is the reason why I got out of this case, by the way, and got out of a second case which he brought and offered to me. I did not have this case. I would like to get that in in case we go on tomorrow, I don't want you to go home tonight thinking that I had this case.

Mr. WRIGHT. At any time did you complete any arrangements with Mr. Wisbach to represent him?

Mr. DWYER. No, not him or anybody. As a matter of fact, in the Federal land program, up to this day I have never had a case.

Mr. WRIGHT. Now, did you ever represent anybody as an attorney who was sent to you by Mr. Harney, to your knowledge?

Mr. DWYER. No, I have never represented anybody before who was sent to me by Mr. Harney. As I say, Mr. Harney eventually—the last page of notes indicate that Mr. Harney came to me a final time—maybe I am jumping—and brought a second case.

Mr. WRIGHT. Your discussion with Mr. Wisbach was a preliminary exploratory discussion, and at no time did you enter into a relationship of client and attorney?

Mr. DWYER. That is correct. However, in that regard he waived the client-attorney privilege of Mr. Wisbach, if there was one, and if there was one on the basis of our original conversation, he waived it, giving me permission to give my version of the conversation that Mr. Wisbach and I had together.

Mr. SCHERER. I think this is very important to this young man, and I would suggest we all keep our mouths shut and let counsel clear it up.

Mr. BLATNIK. Exactly. We will clarify it as much as possible. And then any question will be perfectly proper.

Mr. MAY. Mr. Dwyer, when Harney first met Wisbach and you told him that Wisbach had said Harney had offered him \$223,000, is it not true that Mr. Harney became angry and called Mr. Wisbach a doublecrosser, and said:

I did not—

I am quoting Harney—

I did not offer Mr. Wisbach \$223,000, or in fact anything—

but Harney volunteered that he would probably have appraised the property for \$223,000?

Mr. DWYER. Yes, that is my recollection of it.

Mr. MAY. And now, there are other notes on page 6. Could you explain them, Mr. Dwyer?

Mr. DWYER. Yes, sir; page 6—

Mr. MAY. I have reference to \$223,000, 20 percent. Did Mr. Harney discuss fees with you, what would be a reasonable fee?

Mr. DWYER. Eventually I either from Mr. Elcock or Mr. Harney concluded, I don't remember which, this was back in 1959, that generally in a landtaking case something like a 20-percent fee is considered proper for an attorney. This is at least as a basis for a negotiation with a client. And now, either Mr.—I know Mr. Elcock indicated this general approach to me, if not 20 percent, some other percent.

Mr. MAY. These notes indicate that \$223,000, 20 percent of \$223,000 would be \$44,600, and you take \$44,600 from \$223,000 and that would be \$179,000.

Mr. DWYER. That is correct.

Mr. MAY. So if you did get 20 percent the property owner would get \$179,000, and you would get \$44,600.

Is that your writing, Mr. Dwyer?

Mr. DWYER. No; it is not.

Mr. MAY. Is that your writing, Mr. Elcock?

Mr. ELCOCK. No; I don't believe so. The figures may have been, I couldn't tell. The writing——

Mr. DWYER. The writing is mine, all the writing is mine, other than just the figures.

Mr. ELCOCK. Those could have been figures I did discuss with Mr. Dwyer, there is no doubt about that.

Mr. DWYER. Then if those are Mr. Elcock's, I got 20 percent from him, although again I might have gotten it from Mr. Harney, I just do not know.

Mr. CRAMER. Whether it goes fully through condemnation or settlement or what, the 20-percent figure you had set on close to a quarter of a million dollar transaction?

Mr. DWYER. I am sure that I would have taken a smaller figure.

Mr. CRAMER. I assume so, yes, sir. That is a pretty good fee for condemnation.

Mr. DWYER. On a flat-fee basis and, I will give you X dollars to try your case—win, lose, or draw—I would do it for a fraction of that.

Mr. CRAMER. There is no question about a percentage when he has offered \$223,000 to settle with you?

Mr. DWYER. That is correct.

Mr. MAY. Mr. Dwyer, Mr. Harney then furnished you with considerable information relating to the property; did he not?

Mr. DWYER. Yes; he did.

Mr. MAY. I notice that on the next page of notes it looks like "appraisal \$223,816, nothing for business, he gets a value of land and buildings." This appraisal figure of \$223,816 was given to you by Mr. Harney?

Mr. DWYER. Yes; it was.

Mr. MAY. And you also go into detail with all the rest of this information, but this has to do with the property itself, assessments and improvements and cost and information like that?

Mr. DWYER. That is correct.

Mr. MAY. I notice that some place along the line he received a note showing that the land cost \$35,000 and the improvements \$45,000, and also the total assessment on the land and buildings as \$28,150. And Mr. Harney also furnished you some Marshall Stevens information, which does not go into that in detail, but additional information relating to the property, and a computation of the property value by departmental employees. Did Harney mention that these figures had been gathered together by departmental employees?

Mr. DWYER. I do not recall. He gave these, to the best of my recollection, as his feeling on the value of the land; that is all I know, and they came to \$223,416.

Mr. MAY. We might note here, Mr. Chairman, that we have in the departmental file much of this information. I would like to point this out, that the notes show buildings, and other computations showing that there is to be \$223,416, and somebody is in error, because in adding it they are off some \$10,000. Actually the figure should be \$213,416.

I will notice down at the bottom of that page, page 11, the notation "Frank L. Harney, Jr., 190 Lowe Road, Wellsley Hills, CE 7-1972."

Was that given to you by Mr. Harney?

Mr. DWYER. Yes.

Mr. MAY. The next page of notes reads :

Herbert L. Dodge, right-of-way Engineer, Right-of-Way Division, Department of Public Works, 100 Nashua Street, Boston 14, Mass.

Why did Mr. Harney give you that name and address?

Mr. DWYER. I did not remember when I gave this information to the investigators, however, either you or one of the others suggested to me that this is the person to whom one writes if one has a client, and so I assumed without knowing that perhaps that is the reason why he gave it to me.

Mr. MAY. Mr. Dodge would be the normal person to bring about the contract. Did Mr. Harney indicate to you that his appraisal was perhaps flexible?

Mr. DWYER. Not at this time, no.

Mr. MAY. At any time?

Mr. DWYER. No; he never indicated to me that his appraisal was flexible, no, he indicated to me that his appraisal did not determine the amount which would be given for the property, that there are other appraisals which could be considerably higher than his, but he never indicated that to me.

Mr. MAY. Did he mention that those other appraisals would be reduced by the higher-ups in the department?

Mr. DWYER. He never gave me the details, I never discussed the precise details of how it would work.

Mr. MAY. Did Mr. Harney indicate that he was a big man and had a lot of influence with the people who would review the appraisal?

Mr. DWYER. Mr. Harney indicated that he had a lot of influence generally in politics, and that it was a very fortunate thing for me that—

Mr. MAY. I am talking about, did he indicate that he had influence within the department?

Mr. DWYER. I don't know. He indicated, as I say, that he had friends everywhere, but I don't know whether he specifically said—

Mr. MAY. I am referring particularly to the review of appraisals, did Mr. Harney indicate that he had influence to bring about—that he had some influence on those people who would review the appraisal?

Mr. DWYER. I don't remember whether he did or not. He might well have.

Mr. MAY. Toward the end of the meeting how did you leave it with Mr. Harney?

Mr. DWYER. He suggested to me that these figures he had given me in regard to the value might become more clear if I would drive down to Fall River, he would show me the particular piece of property. So I said, "Fine."

So we then made a date, he said he would meet me at the junction of Routes 128 and 135 at 9:30 a.m. on October 20, which was some 4 days later, and we would drive down.

Mr. MAY. At the end of the meeting did Harney say in essence, "Come on, we will go down together; I will show you the property," and did he indicate the State was going to take a lot of land, and it would be well to get a foothold in this area?

Mr. DWYER. Yes, he did.

Mr. MAY. And there was much money to be made?

Mr. DWYER. He indicated that a lot of land was to be taken, and if I did a good job for this client there was no telling how much success I could have.

Mr. MAY. The next page of the notes, would you read that?

Mr. DWYER. You mean "Memo on trip to Fall River"?

Mr. MAY. No, "Reminder."

Mr. DWYER. This is again written by my secretary:

Tuesday, October 20. Meet Mr. Harney at the junction of 128 and 135 at 9:30 a.m.

Mr. MAY. Did you meet Mr. Harney?

Mr. DWYER. Yes, I did.

Mr. MAY. Did you ride down in his car?

Mr. DWYER. I met him, I drove my own car to this junction where I met him, and I got into his car, and he drove down. And I made a memo.

Mr. MAY. What sort of a car does Mr. Harney have?

Mr. DWYER. Mr. Harney impressed me with a very attractive-looking Cadillac, I guess a late model. I was the owner of an Edsel at that time. I still have it.

Mr. MAY. So you did go down to Fall River with Mr. Harney, and he did show you the property. Did you attempt to get together with Mr. Wisbach at that time?

Mr. DWYER. No, I did not.

Mr. SCHERER. What was Harney's salary?

Mr. MAY. \$83 a week—in that range.

Mr. CRAMER. Not exactly a Cadillac salary, is it—\$83 a week?

Mr. MAY. Mr. Dwyer, on the way back did you stop off for a bite to eat with Mr. Harney?

Mr. DWYER. Somewhere, yes; I don't remember where.

Mr. MAY. Do you recall what took place at that time? Do you recall the conversation that Mr. Harney had with you at that time?

Mr. DWYER. He simply again went over the figures that he had given me in the office, including his appraisal, and he left.

Mr. MAY. Your notes do record certain data with respect to comparable sales and the like. I was referring to any conversation that would indicate what Mr. Harney expected to get out of all this.

Mr. DWYER. Mr. Harney indicated to me that he was a good friend of the attorney general's. He went further, however, and he said that he assumed apparently that I know the attorney general, which I did not.

Mr. SCHERER. Who was the attorney general?

Mr. DWYER. Mr. McCormack. But he also indicated that the attorney general would not recognize him by name, and he wanted me to put in a good word for him with the attorney general.

Mr. MAY. Did Mr. Harney say he was a good friend of the attorney general?

Mr. DWYER. Yes, he did. What he said, the attorney general would not recognize him by name, but to put in a good word for him to the attorney general.

Mr. WRIGHT. If he was such a friend, how come he wanted you to put in a good word for him?

Mr. DWYER. Well, I would suppose that—I don't know why. Naturally, the implication—he was not that good a friend, he was a great

friend, he said, but he said that the attorney general would not recognize him by name.

Mr. WRIGHT. Was he a name dropper?

Mr. DWYER. He was very definitely a name dropper. He had a Cadillac, you see.

Mr. WRIGHT. But when it came down to the point of his knowing one individual, namely, the attorney general, it turns out he didn't, and he wanted you to put in a good word for him with this attorney general?

Mr. DWYER. He said he was a very good friend of the attorney general, but he said the attorney general would not recognize him by name. Obviously, he was not a very good friend of the attorney general. But I did not even bother to check.

Mr. WRIGHT. Do you suppose he presumed because of your association in an office with Mr. Elcock that you knew the attorney general? Do you suppose that might have been the reason why he came to you trying to make good medicine with you, or curry your favor?

Mr. DWYER. That is my assumption. And when I came to this conclusion I decided that—and Mr. Elcock, when I explained it to him, agreed with me that I was very definitely doing the right thing, that I just could not take this case.

Mr. WRIGHT. This fellow pretended to be on real good, close terms with a great many important people; did he?

Mr. DWYER. He did. Unfortunately, I had very little connection with the local political scene, and I am afraid the name dropping lost its effect on me, because I didn't know.

Mr. MAY. Did it become clear as you moved along, Mr. Dwyer, that what Mr. Harney wanted done was to have you through Mr. Elcock put in a good word with the attorney general on behalf of Mr. Harney?

Mr. DWYER. That is correct.

Mr. MAY. We will see that reflected in the notes.

Mr. COOK. Did you know the attorney general?

Mr. DWYER. I did not; I have shaken hands with the attorney general twice, to my recollection, since that time.

Mr. COOK. But as of that time you did not know him?

Mr. DWYER. I did not know the attorney general. As I say, I was simply renting space in Mr. Elcock's office, and we were hardly on what one would call familiar terms.

Mr. MAY. Mr. Elcock, you know the attorney general; do you not?

Mr. ELCOCK. I certainly do.

Mr. MAY. Mr. Elcock, when you learned this from Mr. Dwyer, what was your reaction?

Mr. ELCOCK. I told him that that was the kind of case that he should not be associated with.

Mr. MAY. You never talked to the attorney general about Mr. Harney?

Mr. ELCOCK. Not right then, because as far as I could see, it was just someone else trying to get an introduction. But when I later learned of some of the implications of the Harney matter I discussed it in detail with the attorney general. But that was some time later.

Mr. MAY. Did the attorney general know Mr. Harney?

Mr. ELCOCK. No, sir; he did not.

Mr. CRAMER. When did that discussion take place?

Mr. ELCOCK. That must have been several months after Mr. Dwyer's contact. It was when the committee first came in and asked me about it and told me the implications of Mr. Harney's activity, and I went to the attorney general at that time, and I told him I would be glad to give the committee whatever I had.

Mr. CRAMER. And that was about what year and what month, for the record?

Mr. ELCOCK. I believe that was sometime in 1960, the latter part.

Mr. SCHERER. During the investigation of this matter—you said you did not know Harney. Did your inquiry in the attorney general's office disclose that Harney knew anyone in the attorney general's office, especially among those handling these right-of-way condemnation suits?

Mr. ELCOCK. No, I personally did not make any such detailed investigation in the attorney general's office, because it would not be in any division with which I was associated.

Mr. SCHERER. Did you find out if Harney has any relation with any assistants, particularly in that division handling these condemnation matters?

Mr. ELCOCK. No, I merely called this to the attention of the attorney general, and I assumed he would get the information.

Mr. WRIGHT. Mr. Elcock, how many attorneys general have you worked for?

Mr. ELCOCK. I worked for two, George Fingold, and then when he died, Mr. McCormack asked me to stay on for a short time to finish up the work I had. We seemed to get along for a while, and so I stayed on longer. I was there approximately 2 years after McCormack was elected.

Mr. GRAY. Mr. Elcock, what year did you start working for the attorney general?

Mr. ELCOCK. In 1953.

Mr. GRAY. You worked for a period of 7 years?

Mr. ELCOCK. I did.

Mr. SCHERER. Before we leave that, we may be doing Mr. McCormack an injustice.

Let me ask you, did Mr. Harney say he knew the attorney general and mention Mr. McCormack's name or did he, just say, "I know the attorney general"? Because there are dozens of assistants, and he might be referring to the assistant attorney general handling this type of matter.

Mr. DWYER. No, he claimed that he was a friend of Attorney General McCormack, he made this clear.

Mr. SCHERER. Did he mention any other assistants?

Mr. DWYER. No, he did not, only Mr. McCormack and no one else. On one occasion he called him Eddie.

Mr. SCHERER. Well, who else rents space in your office from Mr. Elcock, or who did at that time?

Mr. DWYER. At the time Bob Riordan was still there full time, or he may have just left, and Bob McNamara part time, they were the main ones. And Ben Barsanti was another.

Mr. SCHERER. Did any of those lawyers have jobs with the State or the Federal Government?

Mr. ELCOCK. No; to my knowledge none of them did.

Mr. SCHERER. Did any of those lawyers do work for you, Mr. Elcock?

Mr. ELCOCK. No. Occasionally if I were tied up with a given matter they might answer a call to the motions session, or something of that sort. But—

Mr. SCHERER. The reason I asked you that, and it is no criticism; it is a common practice. You said you maintained your office; that these men were in it, and that you spent about 90 or 95 percent of your time in the attorney general's office. It is only normal and natural that some of your office associates would handle some of the law work for you. That is the only reason I am asking you these questions. A lawyer serves in the attorney general's office only for a limited amount of time, and he has to maintain a practice, so he has something to come back to when he gets out.

You didn't answer the question as to whether some of these other lawyers did some of your work.

Mr. ELCOCK. They all in turn might have done a small amount of work on other matters. And none of them handled my business for me.

Mr. SCHERER. None of them had any jobs with other divisions of Government?

Mr. ELCOCK. No.

Mr. SCHERER. I am just wondering who in that office could have possibly referred Harney to Dwyer.

Mr. KLUCZYNSKI. Mr. Chairman, the gentleman asked that we let counsel proceed, and because there is a drop of politics in it, he wants to continue asking questions.

Mr. SCHERER. You are right, John, I did make that statement, and I apologize. But I wasn't trying to inject any politics, I was trying to help the attorney general out.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Dwyer, when you stopped for a bite to eat on the way back from your trip to Florida with Mr. Harney, did Mr. Harney indicate to you that he would have to be taken care of in some fashion?

Mr. DWYER. No; he did not.

Mr. MAY. Did you not come back and tell Mr. Elcock that Harney seemed to be looking for a cut?

Mr. DWYER. No, sir, I did not. When I decided to get out of this case it was hardly on the basis of my feeling that I did not want this particular man to be doing me a favor. I anticipated that he could well come to me in the future and do so. But he never approached me at any time for any financial benefit of any kind, and if he had done so at that time I would have stopped my discussion with him. He never did during the entire brief series of contacts.

Mr. MAY. Mr. Dwyer, when we spoke to you in Boston, about this matter on two occasions you indicated that from those things Harney said you concluded Mr. Harney was looking for, and I quote you, "a cut," and you told us that you told Mr. Elcock about this, and he immediately replied, "No good."

Mr. DWYER. Not at this point did I conclude that. You asked me, if I understood your question correctly, did he ever ask for a cut. The answer is "No," he did not. He was being very helpful. Obviously, he was very helpful, he was giving me the figures that would help me to go to the registry, to look up the title of the property, and he was giving

me these other figures which may or may not have a value. When I told Mr. Elcock that I was indeed—the favor he wanted, apparently—speculation is rife, I do not know—but my speculation is that he wanted to use the office somehow to influence appraisers. When I told Mr. Elcock, as I did eventually—this is some time toward the end of November, after one or two calls from Mr. Harney wanting to know, had I talked to the “AG,” indicating that he was encouraging Mr. Wisbach to come into the office—at that point I indicated to Mr. Elcock in conversation that it could very well be that Mr. Harney would put a bite on us.

And when I described that, plus the summary of what I have already told you people, Mr. Elcock said, “Get out.”

MR. MAY. On November 18, 1959, you received another visit from Mr. Harney; is that true?

MR. DWYER. Yes; I did.

MR. MAY. And you recorded what took place at that time very nicely. Would you read your notes at page 15 concerning this matter?

MR. DWYER (reading):

NOVEMBER 18, 1959.

Interview with Harney.

1. Wisbach was reluctant to sign a 20-percent across-the-board contract, fearing that he might be doublecrossed somehow. He still wants to cooperate with us, however.

2. Wisbach has secured an appraisal from a man who supposedly has eminent qualifications in the amount of approximately \$370,000. His name is Frank Feitelberg, address is Fall River Trust Building.

The above is based on \$6.50 per square foot, of 47,000 square feet, plus \$97,000 for improvements.

Wisbach concedes that his appraisal was optimistic, but feels the final price should be somewhere between \$223,000 (Harney's figure) and \$370,000.

Harney mentions that the Granite Block Building land on Main Street is being appraised at \$22 per square foot on Main Street. This figure I mention only for purposes of comparison.

3. Harney figures Wisbach will be happy to take \$223,000 net. He feels the man will be delighted to sign the following type of contract:

A. Fifty percent of all over \$200,000.

B. Seventy-five percent of all over \$223,000.

4. Harney would like to have you talk to McCormack. He feels that the appraisals might run things well over \$300,000.

MR. MAY. Thank you. That shows you how active Harney actually was. Here's a State representative sitting down with an attorney discussing what might be a reasonable fee, 50 percent of all over \$200,000, 75 percent of all over \$223,000.

Harney figures Wisbach will be happy to take \$223,000 net, he feels the man will be delighted to sign the following type of contract.

I notice at the bottom of the page those notes, they read:

Ten percent of first \$200,000 and 50 percent of all over \$200,000, fee in no event to be greater than 20 percent.

Whose figuring is that?

MR. DWYER. That is my handwriting. And after this I did discuss the question of fee with Mr. Elcock, and asked him what kind of a fee he might be able to take in a land damage case. And he indicated some percentage—

don't work for nothing, take some kind of an—

Mr. MAY. Was this kind of an academic discussion of what a reasonable fee would be in a situation such as this?

Mr. ELCOCK. That is all, a general question.

Mr. MAY. In the nature of discussion generally, not what somebody should do in this particular case?

Mr. DWYER. That is what it was.

Mr. MAY. On November 19, 1959, did you, Mr. Dwyer, direct a letter to Mr. Wisbach?

Mr. DWYER. Yes.

Mr. MAY. Would you read that, please?

Mr. DWYER (reading):

NOVEMBER 19, 1959.

Mr. G. WISBACH,
Dodge-Plymouth Corp.,
Fall River, Mass.

DEAR MR. WISBACH: At the time of your original visit to my office, I told you I would look into the land-taking problem which we discussed and then contact you.

I am now sufficiently familiar with the situation to be able to talk specifically about the terms under which I would be willing to handle this matter. If you are still interested in retaining me, please contact this office for an appointment.

Very truly yours,

JOHN B. DWYER.

Mr. MAY. You never received an answer to that letter?

Mr. DWYER. I never received an answer to that letter.

Mr. MAY. And you were not retained by Mr. Wisbach?

Mr. DWYER. I was not retained by Mr. Wisbach.

Mr. MAY. I suppose those notes on page 17 also reflect your consideration of various fees?

Mr. DWYER. That is correct.

Mr. MAY. Twenty percent over \$200,000, 75 percent over \$223,000 until—20 percent, and then 50 percent over \$180,000.

Mr. DWYER. That is correct.

Mr. MAY. And also I noticed that you have another notation relating to Mr. Harney—CE 7-9172, Frank Harney. Do you see that on page 17?

Mr. DWYER. I do.

Mr. MAY. I would like to point out to you that previously Mr. Harney had given you a phone number, and you apparently had quoted him incorrectly. This is Harney's true number as shown on the record.

Mr. DWYER. That I don't know. I never contacted it.

Mr. MAY. The number you gave for him was CE 7-1972, which was incorrect, the correct number is as you have it here, CE 7-9172.

Mr. Dwyer, it became apparent to you after a while that this was a kind of awkward situation; is that right?

Mr. DWYER. That is correct—well, Mr. May, I don't know, awkward for me, it was an awkward situation to handle, I decided I was going to get out of it. I had not done it at this time, a week or two after that, Mr. Harney—there is no record, but as I recall, there was a phone call in which he indicated he was attempting to coax Mr. Wisbach to come into the office. At this time I sat down and had a general discussion with Mr. Elcock about the problems as I saw them, and it was at this point that Mr. Elcock said, "You should get out."

Mr. MAY. As an attorney did you ever become aware that you might be participating in a conspiracy?

MR. DWYER. The facts happened as I state them to you as having happened. I concluded that I wanted to have nothing to do with this. I figured he was using the office immediately to try to get a good word put in with the attorney general for him. He might come and ask me for money. If I succeed in landing a case and got a big fee, if I should be in a position where someone may come to me and ask me for money, or worse still, he might come to me after I got this case and say, "Dwyer, somehow or other I want you to see what you can do to raise the appraisals." Of course, I could do nothing, but I don't know what was in Mr. Harney's mind.

MR. MAY. You keep saying that, Mr. Dwyer. Didn't it become clear to you from the conversations with Mr. Harney that you were the one that could arrange for the higher appraisals, wasn't that indicated to you?

MR. DWYER. Mr. Harney indicated to me that he was a big man, but I wonder whether he was a big man. The more he told me how big a man he was, the less faith I had that he was a responsible person. I began to suspect—

MR. CRAMER. You mean to tell us today that the awkward position you saw in the situation, if you want to use that terminology, is what he, Harney, thought you might do for him with some of the higher-ups in the highway department or attorney general's office, or what have you?

MR. DWYER. No, That in addition to what I said, the entire situation became such that I wanted to disengage myself from it.

MR. CRAMER. That is what I am talking about now. How did you size up "the entire situation"? What was repugnant about it to you at this point?

MR. DWYER. At this point—well, let's see—in the first place Mr. Harney, a stranger was doing me a favor. Well, I have found in my brief experience on the Medford School Committee that when strangers do me favors they sometimes get around to asking favors in return. So I didn't want a favor from this man. I anticipated that I could go on further and find out that this man was approaching me for money.

MR. CRAMER. Wasn't it quite obvious when he suggested what your attorney's fees should be—as a matter of fact, didn't you come to end up with the strong impression that he was going to have his hand out eventually and expect his cut?

MR. DWYER. Yes, I did, that is correct.

MR. SCHERER. Isn't that what you told our investigator; namely, that he indicated to you that he expected a cut?

MR. DWYER. No; I got this impression. He never indicated to me that he wanted a cut.

MR. CRAMER. But you got the impression—

MR. SCHERER. Let's clear this point up, because I understood our counsel to say that that is what this man said.

MR. MAY. That is true. Mr. Dwyer, you were interviewed by a Mr. McElligott and Mr. Fitzpatrick of this committee. You told them that Mr. Harney never came out directly and asked you for a cut, but you said that, based on what the various conversations you had with Mr. Harney were, that you concluded that he was looking for a cut. When we interviewed you you said the same thing to us, that he didn't

come out and ask you for a cut, but based on his conversation with you you concluded that he was going to ask for a cut.

MR. DWYER. If there is a difference, the only point is that I concluded he was going to ask for a cut. This is my recollection of what I told you and what I told the other gentlemen that interviewed me. But I do not ever recall the man having asked for a cut. Here is a man, a big deal, bigtimer, doing me a favor. Sure, I realized that I had to get out. There was no alternative. I knew that I could not get this case on my own without him eventually claiming that he had done me a favor. But I had not concluded that he had asked for a cut.

MR. SCHERER. You recognized that he was doing something illegal when he came to you and told you the State's figures didn't you?

MR. DWYER. I did not know. He told me that his opinion of the value was \$223,000. I did not know that he would not reveal that. It is my understanding—again, I have not had a land damage case—but it is my understanding that, especially when they go to court, before they go to court the appraisals are exchanged. I do not know this for a fact, but it is my understanding that the State and the landowner, the ex-landowner, exchange appraisers.

MR. MAY. Perhaps, being a novice in this area, Mr. Dwyer, you were not aware of it, but this case was a long way from going to court. And these figures that Harney was bandying about were highly confidential figures in the department.

MR. DWYER. I gather that from the rest.

MR. MAY. How a representative of the department of public works could reveal those figures—he has no business revealing figures to anybody, he has no business divulging data from the confidential files of the department to anybody, and certainly he did that in great style.

MR. DWYER. I did not know this myself at the time.

MR. MAY. I am sure you did not. Mr. Harney was not satisfied that you just lost this case, he did come back and see you again?

MR. DWYER. Yes, he did.

MR. MAY. What did he say to you on that occasion?

MR. DWYER. He came back once more, and this was the last contact I ever had with the man. He came back, I cannot pin the date exactly, sometime in December, I would suppose, late November 1959, and he indicated to me that Mr. Wisbach was not coming in, but that there was another case that he had lined up which was an excellent case, it was the Martinique Club, which was worth between \$180,000 and \$200,000, that the owner would go 20 percent off the top, the owner of this property was happy to give a 20 percent fee off the top, that this owner would be willing to take \$120,000. And then he asked, "Has a call been made to Ed about Frank?" and if so, what answer? I was very cold to him; I got him to the door as fast and as politely as I could.

MR. SCHERER. Has a call been made to whom?

MR. DWYER. Has a call been made to Ed about Frank, he said, "Have you called the attorney general, Ed McCormack about me, and put in a good word about how hard I am working?"

MR. WRIGHT. This was a first name operator, he referred to these people by their first names?

MR. DWYER. Right.

MR. WRIGHT. He wants to know if you have made a call to the attorney general putting in this good word for him?

Mr. DWYER. That is correct.

Mr. WRIGHT. Did you tell him that you had not?

Mr. DWYER. I was not—I do not remember what I said, I never said that I had, I would not lie even to him on that basis, I simply got the man out the door. Remember, prior to this business I had determined that I could not take the *Wischbach* case whether Wisbach came in or not. So when he came in on this I just wanted to get the man out of the office.

Mr. WRIGHT. What kind of a good word did he want you to put in for him?

Mr. DWYER. He is a good guy.

Mr. WRIGHT. He wanted you to call and tell the attorney general that Frank Harney is a good guy?

Mr. DWYER. He is a good guy—obviously the assumption was that I was a pretty good friend of the attorney general's, although I had never shaken his hand, even, I recognized him, of course, and here he was doing me another favor, or attempting to. But without question he knew I wanted nothing to do with him, he never contacted me again in regard to this case, that or any other.

Mr. MAY. Mr. Dwyer, see if I sum up properly. Mr. Harney came back to you on this occasion and he said, "the *Wischbach* case was a good case," and then said, "that is too bad, but here I have another one that is even better. And this property is the Martinique Club, and it is worth \$180,000 to \$200,000, and the property owner will take \$120,000, and he will go for a fee 20 percent off the top." Is that right?

Mr. DWYER. That is correct.

Mr. MAY. Mr. Chairman, so there is no misunderstanding, simply because a person's name comes up in these hearings doesn't necessarily mean that that individual is engaged in any wrongdoing whatsoever. Here is a case. Mr. Couto was the proprietor of the Martinique Club. Our staff people went to Mr. Couto, Louis N. Couto, 169 Oakland Street, Fall River, and he was interviewed by Mr. James Fitzpatrick and Robert McElligott of our staff. And Mr. Couto told staff members that, yes, Mr. Harney was one of the several people who visited the property regarding the taking, Couto asked Harney what the procedure was, and Harney suggested that Mr. Couto obtain a good lawyer, and Mr. Couto said he had one already. And Mr. Harney asked Mr. Couto if he had an appraiser. And Mr. Couto said that he felt that there was no necessity for having an appraisal at that time, that he would first await the State's offer and he turned Mr. Harney down completely. And Mr. Couto had a regular attorney and retained a regular attorney, and he handled the land taking case from there on. Mr. Couto had no further contact with Mr. Harney. I want to make this very clear.

Mr. Elcock, throughout this affair your advice to Mr. Dwyer was to drop the case, is that not correct?

Mr. ELCOCK. That is correct.

Mr. SCHERER. From what point on?

Mr. ELCOCK. I didn't really learn about the case until after all these negotiations had taken place, so that I dare say when Mr. Dwyer decided to drop it it was shortly after having talked to me.

Mr. BLATNIK. When Mr. Dwyer did not drop the case, did he continue and proceed after you got further details and information from

Mr. Harney? Didn't you write that letter, thereby initiating the case? You wrote to Mr. Wisbach, and therefore you were prepared to discuss in more detail the proposition? So he didn't drop the case, Mr. Wisbach just refused to answer your letter.

Mr. DWYER. I wrote the letter, I still didn't know whether I could take the case. All I had had was an initial interview with Mr. Wisbach. The mere fact that Mr. Harney came to my office—Mr. Harney himself could not prevent me from taking the case. He, whether he liked or disliked me, could not prevent my having a case with Mr. Wisbach. I wanted to call Wisbach in to ask him about these things. At that point I had not finally decided one way or another. So 2 weeks or so after that a call came, to the best of my recollection from Mr. Harney. There is a note in here to that effect, indicating that he was trying to encourage Mr. Wisbach to come in with me. At that time I began to feel uncomfortable indeed, and I sat down and I talked in some detail with Mr. Elcock.

Mr. SCHERER. You say you talked to Mr. Elcock at that time in some detail? That wasn't the first time that you talked to Elcock, was it?

Mr. DWYER. I asked Mr. Elcock about the fee arrangement in a land damage case prior, but I didn't talk to Mr. Elcock about all these details which I have written in my notes and which I indicated to you today.

Mr. SCHERER. From the first time you heard about this case until you wrote this last letter to Wisbach, how long a period did that encompass, just approximately?

Mr. DWYER. From mid-October to mid-November.

Mr. MAY. Now, you did discuss it with Mr. Elcock immediately after you took the first set of notes, didn't you, as to fee?

Mr. DWYER. Yes, I discussed a land damage case fee with Mr. Elcock.

Mr. MAY. And you exhibited to him the notes that you had, did you not?

Mr. DWYER. I had them, I am not sure whether he read them or not, all I discussed with him at that time was that I had a potential land damage case, and—

Mr. MAY. And so you had no further discussion with him until you decided to drop the case?

Mr. DWYER. No—let's see—not to my recollection. I might have somewhere along the line indicated that I wasn't overly pleased with my client, but I have no particular recollection of it, because it happened in 1959. When the investigator first came here, I didn't even remember the name of the case.

Mr. CRAMER. On November 19, 1959, after all of this transpired, you wrote a letter to Mr. Wisbach and told him that you were willing to take his case, and you had had a chance to review it, and for him to contact you, is that right?

Mr. DWYER. I don't believe so, sir, no. I invited him into the office.

Mr. CRAMER. Wasn't that the date of the letter?

Mr. DWYER. That is the date of the letter. I didn't say to him, "I am willing to take your case" because I said, "Come in and I will discuss the terms on which I am willing to take the case," can I take it,

does he want me as an attorney to handle a legitimate case. He gave no indication of it in his first interview, as I recall.

Mr. CRAMER. At that time, though, you had not decided that you should not take the case, obviously, because you wrote him a letter telling him you wanted to discuss it with him.

Mr. DWYER. That is right, I had not decided to take it, and I had not decided not to take it. Remember, I had only had an initial interview with this man, Mr. Harney, as a separate matter, I had had an interview with Mr. Wisbach, and I told him at that interview that I would contact him.

Mr. BLATNIK. But Wisbach was a very—I wouldn't say inconsequential as a person—but he was not the initiator, obviously you would not have had this contact with him. He made the original contact with you as the result of a very strong recommendation from a complete stranger that you were a man for Mr. Wisbach to see. From behind the scene there are lots of things going on, figures being obtained from the State office, Harney is quite an active person all around, and he comes up to your office and gives you quite a bit of information, some of it in strictest confidence, confidential information from the department, and then you write a letter to Wisbach, and he doesn't respond, so Harney gets back and prods Wisbach again, and this man was stoking fires in about five different spots, trying to crystallize or firm up this little bit of an operation, so he called it, to set it up.

Now, you must have been aware over a period of 2 months of what was going on. Wisbach was not doing all the initiating.

Mr. DWYER. Oh, no. Well, as I say, I have given to you the facts in the chronological order to the best of my recollection as they happened. At the time I sent this letter I had not decided either way whether I could or could not take the case. Obviously, the only way I could take the case is the way I have taken every other case that has come to me since my entrance into the field of law; namely, on a legitimate basis.

Could I take this case on a legitimate basis? Did Mr. Wisbach want me to take it on a legitimate basis? My assumption was, no. My assumption at the time I wrote this letter was that Mr. Wisbach did not want me to take the case on a legitimate basis. But I did not know that Mr. Wisbach did not want me to take what could be a substantial case on a legitimate basis. I did send the letter.

Mr. CRAMER. As a matter of fact, isn't it true that during this period, as the chairman suggested, the evidence indicates that Mr. Harney was carrying on the negotiations in effect between you and Mr. Wisbach, and was coming to you and asking you whether you had gotten the case yet, and what the fee should be, talking to you about it, and what the appraised value of the property was?

Mr. DWYER. He came to me twice, once initially with a trip following it down to Fall River, and then once more.

Mr. CRAMER. And shortly after that you wrote a letter to Mr. Wisbach and said you were interested in the case, will he come and talk to you about it?

Mr. DWYER. I sent the letter, and as I say, I had not then absolutely made up my mind one way or the other, probably I could not.

Mr. CRAMER. And when did you finally realize that there was something wrong with this kettle of fish and decide that you did not want the case even if Mr. Wisbach has gotten in touch with you, how long after you wrote the letter did you make this decision?

Mr. DWYER. Within a week or two after I got a call from Mr. Harney in which he indicated that Mr. Wisbach was reluctant to come in—

Mr. CRAMER. Mr. Harney then advised you that Mr. Wisbach was reluctant to come in?

Mr. DWYER. Right—and indicated that he was putting on pressure. I could have picked any time, it was the time I suggested, this was the point when I discussed the matter with Mr. Elcock, and he said to get out of it, it was prior to the time when I was approached with the second case, and that day I had just gotten out of the office.

Mr. CRAMER. And Mr. Harney told you at that time that he was exerting pressure, is that right?

Mr. DWYER. That is right. He indicated—Mr. Harney was reluctant to come in still. Obviously he was trying to encourage Mr. Wisbach to come in.

Mr. CRAMER. It was at that point that you talked to Mr. Elcock?

Mr. DWYER. It was at that point that I talked to Mr. Elcock.

Mr. CRAMER. And yet you talked to Mr. Harney on a subsequent date about another deal, is that right?

Mr. DWYER. Oh, no—yes, Mr. Harney walked into the office, and as soon as he came in and he approached this, I got him to the door as soon as I could which, to my thinking, is probably—

Mr. BLATNIK. How soon was the second operation? This took about 2½ months.

Mr. DWYER. I didn't put it down on this. My best recollection is—in fact, I know it was sometime still in 1959, sometime, I would suppose, in mid-December. That is a guess, sometime in December, from the beginning to the end of December of 1959.

Mr. BLATNIK. Mr. Edmondson?

Mr. EDMONDSON. I would like to address a question or two to Mr. Elcock, if I may.

Mr. Elcock, you have already testified that you never at any time discussed this matter with the attorney general regarding any favoritism or any help to Mr. Harney or to Mr. Dwyer, and you never discussed it with him at all in fact until later developments indicated that the case had brought implications that you had initially observed in the case, is that correct?

Mr. ELCOCK. That is correct, sir.

Mr. EDMONDSON. Did you ever discuss with any other member of the attorney general's office having responsibility for these land acquisitions the Harney effort to secure Mr. Dwyer as an attorney to represent a property owner?

Mr. ELCOCK. No, sir. The only intimation that I had was that one of the individuals, Mr. Dwyer, was looking for an introduction to the attorney general, and as far as anything beyond that, I simply told John that he couldn't proceed along those lines. So these are the implications—I didn't have any occasion at that time to investigate it.

Mr. EDMONDSON. The presence in the picture of a State employee with appraisal responsibilities, coming to the office of an associate of yours, with you in the attorney general's office, made it pretty unde-

sirable—a pretty undesirable case as soon as those facts became clear to you, is that correct?

Mr. ELCOCK. Yes, that in itself could have created a conflict as far as I am concerned quite apart from any of these other implications, so I told him, I told John just on that, to get rid of the case.

Mr. EDMONDSON. Do you know of any other instances in which attorneys who are assistants in the attorney general's office, either under the preceding attorney general, Mr. Fingold, you said his name was—

Mr. ELCOCK. Yes, sir.

Mr. EDMONDSON. Either under Mr. Fingold, or under the present attorney general, where those attorneys have participated in any way in the land litigation through attorneys associated with them in their own office?

Mr. ELCOCK. Not to my knowledge. They have had standing instructions from both Mr. McCormack and Mr. Fingold that assistants are not to take cases involving the State, whether or not there is any statutory prohibition to it and to my knowledge, no one has violated that.

Mr. EDMONDSON. Did this prohibition extend not only to the assistants' direct participation, but to an indirect participation through a fee-splitting arrangement with an associate or a firm member?

Mr. ELCOCK. I do not believe that an attorney general would put up with an assistant that would have a fee-splitting arrangement whereby he could participate in a case involving the Commonwealth. Now, it is possible that many attorneys, in dealing with the Commonwealth, might be dealing in fields completely remote from the attorney general's office, and to that extent it is theoretically possible that there may have been representation with which I would be unfamiliar. But as far as any matter that would come into the attorney general's office, I have no knowledge of any such matters.

Mr. EDMONDSON. And this policy, to the extent of your knowledge from approximately 7 years of experience under two attorneys general in Massachusetts, has been followed by both attorneys general?

Mr. ELCOCK. Yes, it has.

Mr. COOK. Mr. Dwyer, did you at any time inquire of Mr. Harney how he happened to pick you as an attorney for Mr. Wisbach?

Mr. DWYER. No, I did not.

Mr. COOK. Why didn't you?

Mr. DWYER. I can't give you the reason as to why I didn't.

Mr. COOK. After all, I understand that was a sizable fee attached to it, the percentage that was referred to. You made no inquiry at any time as to how he happened to pick you for this matter?

Mr. DWYER. On the basis of Mr. Wisbach's initial approach there was no fee, he wanted \$270,000 net, there was no fee. Perhaps, you can argue—and certainly I have had a little more experience now than I had had in 1959—I would argue that I should have called—I want to get a case from Mr. Wisbach, I did not want Mr. Harney, I did not want Mr. Harney to be able to claim that he was a man who was giving me this case. However, whatever the reason for his initial approach was, whatever his initial hopes, I myself hoped to be able to get a case directly from Mr. Wisbach. And if I knew then what I know today, first of all in the initial interview with Mr. Wisbach he could have told me precisely whether he wanted me as an attorney or not. But the facts

happened as I have recorded them here in the notes. I hoped I could get a case. Obviously with each contact the hope I had of getting a legitimate case became slenderer. Eventually it became an obvious certainty that I could not take this kind of a case in view of my own standards. At that time I was out of it. Now, it can be argued that I should have gone out in October rather than November. I think I would argue that I should have left this case in October rather than November.

Mr. COOK. Mr. Dwyer, didn't you become further and further indebted to Mr. Harney when you discussed a fee in relationship between you and your potential client in which Mr. Harney should have no business whatsoever, secondly, by going on a 50-mile trip to Fall River with him to look at the property? How are you extricating yourself from the influence of Mr. Harney when you are actually getting further and further into debt?

Mr. DWYER. One, I did not discuss the fee with Mr. Harney. Two, by going to Fall River with Mr. Harney, obviously Mr. Harney was in a position where he could claim this additional favor. It is correct that he had the right or he could have had the right to claim this. And that is one of the reasons, in addition to the entire picture, one of the reasons I realized that I could not take this case. I did not, as I say, discuss the fee with him. There are things which he said to me, and I put them down. He was proposing these fee arrangements, I did not discuss with him what I would do, to the best of my recollection, with the client whom I hoped would be mine.

Mr. COOK. The question of fee did come up in your conversation with him?

Mr. DWYER. Yes, it did.

Mr. COOK. And subsequent to that you went by car some 50 miles with a State employee to look at the property?

Mr. DWYER. That is right.

Mr. COOK. Which you realized at that time?

Mr. DWYER. That is correct, he being the one that was to offer the money, he being the one who thought the property was worth \$220,000 to \$300,000, a potential client saying to Dwyer, "If you want to work for me, you can do so, but you will get nothing unless you can get something in excess of \$270,000.

So the first problem I had to get in my own mind was, to get straightened out was, is there any remote possibility, before I could do any work, is there any remote possibility that the value of this property can climb to anything like \$300,000.

Mr. ROBISON. May I ask this, Mr. Dwyer: As a fellow attorney I am concerned about your apparent lack of consideration for the ethical questions involved here. If you had gotten the *Wisbach* case it would have been a case against the Commonwealth of Massachusetts, correct?

Mr. DWYER. That is correct.

Mr. ROBISON. And at this point, even though you had not yet reached the attorney-client relationship with Mr. Wisbach, you were going on a trip to Fall River, Mass., and discussing various aspects of this case with a representative known to you, as an employee in fact of the Commonwealth of Massachusetts?

Mr. DWYER. That is correct.

Mr. SCHERER. Would you yield?

Mr. ROBISON. Yes.

Mr. SCHERER. You say you were admitted to the bar in 1956?

Mr. DWYER. That is correct.

Mr. SCHERER. And you didn't start to practice on your own until when?

Mr. DWYER. Until 1959.

Mr. SCHERER. And this incident started to take place about 10 months after you started practicing?

Mr. DWYER. That is correct.

Mr. SCHERER. Mr. Chairman, this young man's participation in this matter has bothered me ever since I have been sitting here. I have been evaluating his conduct in the light of 32 years at the bar. But I just went back to 1929 when I had been practicing 10 months and wondered how I would have reacted. I have come to the conclusion that this young man has been used. And I think perhaps he may be able to tell us if he goes back in his mind who used him.

Do you have an idea how and why you have been used? Am I correct in my assumption?

Mr. DWYER. I have concluded that there was an attempt to use me. I have not been used. What could be gotten—you asked the question, and I am now at the point where I have read the papers, and I am aware of the fact that Mr. Harney has been convicted of fraud, and I know obviously at this point in time, there is no question, the interpretation on every word is here——

Mr. SCHERER. Did you have any idea, sir, why Harney came to you, or who sent Harney in to see you? That is the crux of this thing. What is your relation with Elcock?

Mr. DWYER. That is my guess, yes, that Mr. Harney obviously assumed that I either directly, I don't know, either directly or indirectly knew the attorney general. No. 2, and now I speculate, he might have assumed that I could have even caused some attorney general approach to be made in regard to an appraisal.

Mr. SCHERER. Didn't it ever come to your mind that somebody might have sent Harney in to you knowing your relationship with Elcock? I am not charging Mr. Elcock with anything at all. I don't want my question to indicate that, and I don't want anybody to draw any conclusion by my questions that I impute anything wrong to Mr. Elcock.

Mr. DWYER. That was a distinct possibility, yes, sir.

Mr. SCHERER. And you have thought that?

Mr. DWYER. I thought this was a possibility, yes.

Mr. SCHERER. And you just realized you were being used too late. You think that if you had had a few more years of practice you would have realized it from the beginning?

Mr. DWYER. I feel, as I have indicated to the other Congressmen, that I have no question but that day, this might have gone beyond the initial interview with Mr. Wisbach, but it would not have gone beyond the initial interview with Mr. Harney. Of that I am certain. And I am also happy to think that I did certainly in good time come to the conclusion that as an attorney who up to that point had been nothing but ethical, and who since that time has been nothing but ethical, that I could not take the case.

I am quite pleased, certainly, that it didn't go further.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Chairman, for whatever it is worth, I think the record should show that Mr. Constandy and I spoke with Mr. Harney some several weeks ago, and we asked Mr. Harney at that time, "Why would you do this to a young attorney, and why would you attempt to arrange a case for a young attorney?"

And Mr. Harney at that time said, "I was walking down the street one day, and I met a group of people, some of whom I knew, and I stopped to talk. And Mr. Dwyer was in the group. And somebody mentioned that Mr. Dwyer was at that time running for the Medford School Committee. And they also mentioned that Mr. Dwyer was a sharp young attorney." And so Mr. Harney decided that, "Fine, I will get a nice case for Mr. Dwyer, and make him happy. And then after Mr. Dwyer has been indebted in some fashion to me — that is Mr. Harney's explanation to us, for whatever it is worth.

Mr. SCHERER. That fits in with my conclusion, that this man was used.

Mr. WRIGHT. Mr. Chairman, I think, to be a little more precise, the witness himself has more properly identified the situation, in that an attempt was made to use the witness. I don't believe there has been any showing that the witness was in fact used. I can see a fine point wherein, we might conclude that he engaged in an indiscretion by making this trip with the representative of the State to discuss a matter in which his prospective client would be contesting the State, and I can see a point at which it would seem that the witness might have earlier come to the conclusion that this was an improper situation in which he was discussing with the representative of the State of Massachusetts a case in which he would be representing a prospective client in contest with the State. But from what is then adduced in the way of testimony by this witness from his recitation of the advance that took place, I think it is wholly unfair to say that the witness was used. I think we would have to say rather, that an attempt was being made to use the witness.

Mr. SCHERER. Are you charging me with being unfair to this witness when I tried to help him?

Mr. WRIGHT. I am making no charge at all against Mr. Scherer.

Mr. SCHERER. You said it was decidedly unfair——

Mr. WRIGHT. I said it would be unfair to say that he was used——

Mr. SCHERER. Just a minute. We have got to remember, as the chairman pointed out, that it wasn't this witness that withdrew from this case, it was the fact that the man to whom he directed the letter didn't respond to that letter. And now, we don't know what would have happened——

Mr. WRIGHT. I am accepting at face value——

Mr. SCHERER. That is the reason I stated that this witness was used.

Mr. WRIGHT. I appreciate your concern over the witness, Mr. Scherer, and I know that you appreciate my concern also. And I would make no charge against you at all. I felt quite certain that if the gentleman from Ohio realized that an unfortunate use of terms, might cast an unfair reflection then he himself would be the first to admit it. Let me say that I am accepting at face value his statement, there being no evidence to the contrary, that the witness did of his own volition come to the conclusion that this was not a case in which he wanted to be engaged.

Mr. COOK. Just one other question. Mr. Dwyer, why in your note to Joe did you refer to "our potential client"?

Mr. DWYER. Simply a use of language, no significance.

Mr. COOK. No legal—

Mr. DWYER. No significance was intended. May I just make one more statement in my own defense:

On this question of, was it established that I would not have taken the *Wisbach* case had it come in—or is that speculative—I would like to say that perhaps the best piece of evidence to back up my statement that I ultimately concluded that I would not take the *Wisbach* case were it to come to me was the fact that the so-called Martinique Club did come to me after that decision. The Martinique Club proposal lasted just as long as I was able—just so long as I had to talk to this man before getting him to the door. I think that the objection in regard to my immediate refusal of the Martinique Club, followed by no attempt, no additional contacts by him as a result of his certainty of my attentions, I think that is perhaps as good a proof as any fair-minded people might have that when I say I would not have taken the *Wisbach* case, that in fact I would not have taken the *Wisbach* case.

Mr. BLATNIK. The Chair will comment that that is a very valid point. It is well stated.

Mr. CRAMER. May I ask a question following up what the gentleman asked about "our client"?

Did you share fees with Mr. Elcock? Did you pay him a consultant's fee for helping you on cases like this, or what is the arrangement?

Mr. DWYER. First of all, I have never had before or since a land damage case.

Mr. CRAMER. I mean on other cases.

Mr. DWYER. Mr. Elcock has given me cases in which we have split the fee one way or another.

Mr. CRAMER. That is a typical office arrangement.

Mr. DWYER. Yes, on small cases—

Mr. CRAMER. If you get a case and you need his help you pay part of the fee to him, if he gets a case and he needs your help he pays part of the fee to you, it is an association type of arrangement, is that it?

Mr. DWYER. His level of responsibility being considerably higher than my own at the time, his smaller cases he would give to me and request nothing in return, on any case of any substance that he would give me it would involve some kind of a fee split, but this particular case, as I say, I had no—it had no significance to him at that time, as you know. Later in the notes—

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Chairman, I would just like to make copies of Mr. Dwyer's notes, exhibit No. 4.

Mr. BLATNIK. Without objection, it is so ordered.

(The notes referred to were marked "Exhibit No. 4," and will be found in the files of the subcommittee.)

Mr. BLATNIK. This concludes the hearing for today. The committee will resume at 10 o'clock tomorrow morning. And the hearing for today is adjourned.

(Whereupon, at 5:30 p.m., the hearing was recessed, to reconvene at 10 a.m., Tuesday, February 6, 1962.)

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

TUESDAY, FEBRUARY 6, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS,
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to adjournment at 10:20 a.m., in room 1302, New House Office Building. Hon. John A. Blatnik (chairman of the special subcommittee) presiding.

Present: Representatives Blatnik, Baldwin, Bass, Cook, Cramer, Edmondson, Fallon, Gray, Johnson, Jones, Kluczynski, McVey, Robison, Scherer, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. The Special Subcommittee on the Federal-Aid Highway program will please come to order, resuming public hearings on the State of Massachusetts.

Our first witness this morning will be Mr. Joseph M. O'Connor, project evaluation officer of the Federal Bureau of Public Roads.

Mr. O'Connor, will you please take the chair? Mr. O'Connor, do you solemnly swear the testimony you will give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'CONNOR. I do.

Mr. BLATNIK. Mr. O'Connor, would you for the record give your full name, and your present capacity with the Bureau of Public Roads, and a brief résumé of your record with the Bureau of Public Roads.

TESTIMONY OF JOSEPH M. O'CONNOR, PROGRAM EVALUATION OFFICER, U.S. BUREAU OF PUBLIC ROADS

Mr. O'CONNOR. My name is Joseph M. O'Connor, program evaluation officer, U.S. Bureau of Public Roads. I entered on duty in that organization in December 1957.

Mr. BLATNIK. How long have you been with the Bureau of Public Roads?

Mr. O'CONNOR. Since December 1957.

Mr. BLATNIK. What is your previous work, Mr. O'Connor?

Mr. O'CONNOR. I spent a little over 13 years with the Federal Bureau of Investigation, and 2 years with the Office of Special Investigations of the U.S. Air Force.

Mr. BLATNIK. Mr. May.

Mr. CRAMER. Mr. Chairman, before we begin with this witness, may I ask a question of counsel?

I understand indictments have been returned with regard to some of these people by the grand jury in Massachusetts.

Mr. BLATNIK. May we have this off the record?

Mr. CRAMER. It is a matter of public information, is it not? It has been published in the paper?

Mr. BLATNIK. Go ahead.

Mr. CRAMER. I would like to know who was indicted and what action has been taken for the record of the committee, and for my own information.

Mr. MAY. We will tell you. Can we proceed with this witness?

Mr. BLATNIK. Will it have anything to do with this witness and the record we are making at this point?

Mr. CRAMER. It may.

Mr. MAY. Mr. Constandy, do you have any information on that?

Mr. CONSTANDY. The only thing I have is a newspaper report of the indictment and it states the persons indicted were Fred B. Dole, associate commissioner of the Department of Public Works of Massachusetts; William M. Jacobs, of Newton, who is a fee appraiser employed by the department of public works on a contract basis to appraise properties being taken over by the State; Elton Stephen, of Wellesley, an employee of the department of public works and an engineer in the right-of-way division; Edward A. De Simone, of East Boston, fee appraiser working on a contract basis with the State department of public works on appraisals of properties to be taken.

The fifth person to be indicted is Ernest Reiss, of Belmont, a property owner whose property had to be taken by the State, or a portion of it.

My understanding is there were also two corporations indicted, and I do not have the names of those.

Mr. CRAMER. You can certainly get them. I would assume that the staff would have gotten in touch with the attorney general's office and gotten this information. If the staff has not, I will request that they do so, so we know what the attorney general's office is doing with regard to possible matters that are also before this committee.

Can we get the names of the other parties and corporations?

Mr. BLATNIK. We will get the names of the corporations.

Mr. CRAMER. Thank you.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Chairman, for the record I would like to say that this committee and the Bureau of Public Roads and the citizens of this country are deeply indebted to Joseph O'Connor. When the Bureau of Public Roads initially received allegations concerning these matters in Massachusetts, Joseph O'Connor was placed in charge of the task of developing the information. We have received nothing except the wholehearted cooperation of Mr. O'Connor and the Bureau of Public Roads throughout this entire investigation. I would like

the record to show that this has been a joint effort on the part of this committee and the Bureau of Public Roads.

I will also say at this point that during our investigation we received the cooperation of all agencies—the Bureau of Public Roads, the Massachusetts Department of Public Works, the attorney general's office in the State of Massachusetts, the U.S. attorney's office in the Department of Justice, and the General Accounting Office. These things can be brought to fruition only in that manner, with full cooperation on the part of everybody.

Mr. O'Connor, in the course of your investigation did you receive allegations that property owners in the South Attleboro area were being approached by certain persons with respect to the retention of attorneys, with these people supposedly suggesting that the property owners retain certain attorneys?

Mr. O'CONNOR. We received allegations of people being approached in that area. The name of Attleboro did not occur, but it was in that general area the allegation was pointed to.

Mr. MAY. In the course of your investigation, did people working under your direction have occasion to contact a Mr. Leo J. Fortier?

Mr. O'CONNOR. Yes; they did.

Mr. MAY. I understand Mr. Fortier is now deceased?

Mr. O'CONNOR. That is correct.

Mr. MAY. When your representative spoke with Mr. Fortier, Mr. Fortier was able to give him certain information?

Mr. O'CONNOR. That is correct.

Mr. MAY. Could you tell the committee what that information consisted of?

Mr. O'CONNOR. Well, on August 31, 1960, Mr. Irving Adkins and Mr. J. L. Leonard of the Project Examination Division of the Bureau of Public Roads talked to Mr. Fortier. Mr. Fortier said to them that he had been contacted several times by a State representative with regard to the taking of his land.

At first he didn't recall the name, but then recalled the name of Harney, and I believe the name was Frank L. Harney, Jr., who was contacting him. He said on one of these occasions that Harney told him that if he would contact Mr. James S. O'Connell, of Boston, that he may be able to get more money for his property. He also said Mr. O'Connell knew a lot of people and had a lot of connections.

Thereupon Mr. Fortier addressed a postal card to Mr. O'Connell in Harney's presence, asking Mr. O'Connell to help him in the taking of his property.

This occurred probably in early 1959, according to insertions into the State file. And Mr. Fortier also said that when he received a reply from Mr. O'Connell, he noticed Mr. O'Connell was an attorney, which information had not been conveyed to him previously by Mr. Harney. Therefore, he sensed that something was wrong.

So one day he and his brother-in-law went into the right-of-way division of the department of public works and talked to a right-of-way official, who has not been identified, and asked him if it were necessary that he retain an attorney, and the right-of-way official told him it was not until he ascertained from the State what offer of value they would make to him for his property.

He said upon return he asked a Mrs. Elizabeth Bankett, a retired office employee living in a trailer on his property, to write a letter to Mr. O'Connell, terminating his services.

Mr. Adkins asked if she had a copy of that letter, and she hadn't, but she had a copy of the carbon which she used, and this was dated January 25, 1960, addressed to Mr. O'Connell, and said:

I am in receipt of your letter. However, I do not feel the need of an attorney at this time. If at a later time I change my mind, I will keep you in mind.

Mr. Fortier said after the original contact with him by Harney—Harney had seen him several times and was very gracious to him—but after he had terminated the services, that Mr. Harney became mad. And that was the term Mr. Fortier used. And he said to Mr. Fortier, "Why did you cut O'Connell out?" And that terminated it.

Mr. CRAMER. I didn't understand that. Will you repeat that?

Mr. O'CONNOR. At the last meeting that Harney had with Fortier, and this was after Mr. Fortier had advised Mr. O'Connell that he would not retain his services as an attorney, Harney approached him and Harney asked Fortier why he had cut O'Connell out.

Mr. CRAMER. Who is O'Connell?

Mr. O'CONNOR. He is James S. O'Connell, of Boston, an attorney that evidently had been working with Mr. Harney in this matter.

Mr. BLATNIK. Mr. May.

Mr. MAY. Thank you.

Mr. O'Connor, do you have Mr. Fortier's former address in South Attleboro?

Mr. O'CONNOR. Yes. 1175 Newport Avenue, South Attleboro, Mass.

Mr. MAY. Mr. Chairman, once again we have seen an approach being made by Mr. Frank L. Harney, a representative of the State, to a property owner, suggesting that the property owner use a certain attorney. And we have seen Mr. Harney's lack of success once more.

I have no further questions of Mr. O'Connor at this time, Mr. Chairman.

Mr. CRAMER. Is Mr. O'Connor to be recalled at a later time?

Mr. MAY. Mr. Chairman, Mr. O'Connor will be available at all times during these hearings, and I am sure there will be a number of matters Mr. O'Connor will be able to clarify for us.

Mr. BLATNIK. If there are no further questions—

Mr. SCHERER. Can I ask him one question? How far is Attleboro from Boston?

Mr. O'CONNOR. I would say about 30 to 35 miles.

Mr. SCHERER. That is all. Thank you.

Mr. BLATNIK. The next witness is Mr. Fred M. Roddy, Providence, R.I.

Mr. Roddy, will you please take the witness chair? Will you please raise your right hand? Do you solemnly swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RODDY. Yes, I do.

Mr. BLATNIK. Please be seated.

Mr. May.

Mr. MAY. What is your full name and address, Mr. Roddy?

**TESTIMONY OF FRED M. RODDY, PROVIDENCE, R.I., PRESIDENT,
H & B BUILDING CORP. AND CUMBERLAND ENGINEERING CO.,
INC., SOUTH ATTLEBORO, MASS.**

Mr. RODDY. Fred M. Roddy, 14 University Avenue, Providence, R.I.

Mr. MAY. What type of business are you in, Mr. Roddy?

Mr. RODDY. Machinery manufacturer.

Mr. MAY. What is the name of the company?

Mr. RODDY. Cumberland Engineering Co., Inc.

Mr. MAY. Are you president of that company?

Mr. RODDY. Yes, sir.

Mr. MAY. You also are president of H & B Building Corp.?

Mr. RODDY. Yes, sir.

Mr. MAY. Is that a realty holding company?

Mr. RODDY. Yes, sir. That is correct.

Mr. MAY. Mr. Roddy, both of those are in South Attleboro, Mass.?

Mr. RODDY. Yes, sir.

Mr. MAY. Will you briefly describe your property?

Mr. RODDY. Well, there is approximately 20 acres of land.

Mr. BLATNIK. It is a little difficult to hear, Mr. Roddy. I think the microphone is on, if you will move a little closer, please.

Mr. RODDY. Approximately 20 acres of land, and about 475,000 square feet of building space in a building that was constructed for machinery manufacturing about 1900.

Mr. MAY. How long have you been doing business at that site?

Mr. RODDY. Well, about 7 years. A little over 7 years. Since June of 1954.

Mr. MAY. You purchased the property in June of 1954?

Mr. RODDY. That is correct.

Mr. MAY. Mr. Roddy, there came a time when you became aware that part of your property was going to be taken by the State of Massachusetts in connection with the construction of Interstate Highway 95. Is that right?

Mr. RODDY. Yes, sir.

Mr. MAY. Were you contacted sometime later in 1958 by Mr. Frank L. Harney?

Mr. RODDY. Yes, sir.

Mr. MAY. What happened on that first visit?

Mr. RODDY. Well, he just advised us that there would be a land taking and that it would take approximately 2 acres of our parking lot. And he didn't have many details at that particular time, but he would be glad to assist in any way he could in providing the information we needed, and so forth.

Mr. MAY. Thereafter did Mr. Harney make several visits to your place of business?

Mr. RODDY. Yes. A number of visits.

Mr. MAY. On one occasion was he accompanied by another individual?

Mr. RODDY. Yes. On one occasion he was accompanied by a Mr. Spagnoletti also.

Mr. MAY. Orlando Q. Spagnoletti?

Mr. RODDY. Perhaps. That's right. I think I have—yes, I have his card. That is correct.

Mr. MAY. Mr. Chairman, this is the same twosome we heard about yesterday who talked with Mr. Beaulieu.

Mr. Roddy, what took place when Mr. Spagnoletti and Mr. Harney spoke with you?

Mr. RODDY. Well, as I recall, again it was just a matter of details of the location of the road and the location of the new highway, and in a sense they appeared to be trying to be of assistance in providing me with information that we did need to know which would have to do with getting a new access road, and so forth.

Mr. MAY. Did Mr. Harney and Mr. Spagnoletti seem to be quite knowledgeable?

Mr. RODDY. Well, they did not themselves have too much detailed information, but tended to refer me to the department of public works, stating that they would be glad to tell me the proper people to see at the department of public works, and they were being as helpful as they could in providing the information that was needed regarding the location of the road and elevation of the road, and so forth.

Mr. MAY. Just to establish the time, I think your records disclosed on January 2, 1959, you had lunch with Mr. Harney and Mr. Spagnoletti. Is that correct?

Mr. RODDY. Yes, I have an expense report which shows that.

Mr. MAY. Thereafter did Mr. Harney speak with you about your possible need for an attorney?

Mr. RODDY. Yes. That is correct. It was mentioned that it would be advantageous to employ an attorney for assistance.

Mr. MAY. Did you tell Mr. Harney that you regularly used a particular attorney who did practice in Massachusetts?

Mr. RODDY. Yes. That is correct.

Mr. MAY. What did he have to say about that?

Mr. RODDY. Well, he did point out that it would be to our advantage to have someone who regularly did land-taking, and whose specialty was land-taking.

Mr. MAY. Did Mr. Harney mention any particular attorney?

Mr. RODDY. Yes. He mentioned Mr. James O'Connell.

Mr. MAY. What did he have to say about Mr. O'Connell?

Mr. RODDY. Well, he pointed out that Mr. O'Connell was a reputable Boston attorney and that he would—he had been doing land-taking for quite a long time and practicing before the same people that would be necessary, and so forth; and he would be in an excellent position to see that we, or to secure for us the compensation that would be fitting for the land and the consequence of damages that would be necessary.

Mr. MAY. What else did Mr. Harney have to say about Mr. O'Connell?

Mr. RODDY. Well, at some time in the course of the conversation I found out that he was well acquainted in Boston and that also he had a brother that had some connection with the Governor's office. I didn't learn just what it was.

Mr. MAY. Did Mr. Harney mention the names of any other attorneys?

Mr. RODDY. Well, if he did, I don't recall it. At any rate, I should say in case he mentioned others, he certainly did not repeat them or dwell upon them.

Mr. MAY. Did Mr. Harney give you the name and address and telephone number of James S. O'Connell?

Mr. RODDY. Yes, he did. He did tell me how to contact Mr. O'Connell, and suggested that I might do that.

Mr. MAY. Did he give you the name, address, and telephone number of any other attorney?

Mr. RODDY. No.

Mr. MAY. Did you promptly contact Mr. O'Connell?

Mr. RODDY. Well, I did, I believe. Some contact was made with Mr. O'Connell, and I think I am the person who made the call.

Mr. MAY. I was wondering if you made it immediately after Mr. Harney mentioned Mr. O'Connell's name, or did you wait a while and in the meantime did Mr. Harney have other contact with you?

Mr. RODDY. Well, as best I can recall, the name was mentioned prior to—perhaps several weeks or a month prior to my actually contacting Mr. O'Connell. The indications are that the actual contact was made perhaps about the first of April with Mr. O'Connell, from records that I have here.

Mr. MAY. Was it a situation of Mr. Harney mentioning the name of Mr. O'Connell on two or three occasions before you eventually called Mr. O'Connell?

Mr. RODDY. I would say that that is probably correct. Yes. It was mentioned more than once.

Mr. MAY. So there did come a time when you believe you made a phone call to Mr. O'Connell?

Mr. RODDY. That is right. I made an appointment.

Mr. MAY. And what arrangements were made as a result of the phone call?

Mr. RODDY. Well, we made an appointment to have lunch at the Boston Club at Boston.

Mr. MAY. Do you recall about when that occurred?

Mr. RODDY. Well, it was about the first—the early part of April, I should say.

Mr. MAY. April 1959?

Mr. RODDY. Of 1959. Yes. That would be correct.

Mr. MAY. So you went to the Boston Club?

Mr. RODDY. Yes, that is correct.

Mr. MAY. And what happened there?

Mr. RODDY. Mr. O'Connell and I had lunch.

Mr. MAY. Pardon me. Before you met Mr. O'Connell, did anybody else have contact with you at the Boston Club?

Mr. RODDY. Well, as I recall it, Mr. Spagnoletti came by and shook hands with me while I was waiting. Mr. O'Connell was late and did not appear at the appointed time.

While I was waiting in the waiting room, why, as I recall it, Mr. Spagnoletti came by and shook hands with me.

Mr. MAY. Did Mr. Spagnoletti wait and introduce you to Mr. O'Connell?

Mr. RODDY. Perhaps he did. I can't be quite positive about that. I recall he did not have lunch with us, but I am not absolutely sure that he introduced him, but I think probably he did.

Mr. MAY. We have a situation where you had never met Mr. O'Connell.

Mr. RODDY. I had not met Mr. O'Connell.

Mr. MAY. He did not know you?

Mr. RODDY. That's right.

Mr. MAY. And he didn't know what you looked like?

Mr. RODDY. That's right.

Mr. MAY. And you had met Mr. Spagnoletti?

Mr. RODDY. That's right.

Mr. MAY. And you met Mr. Spagnoletti at the Boston Club. Was Mr. Spagnoletti apparently aware that you were there to meet Mr. O'Connell?

Mr. RODDY. Well, I gathered that he was. Actually I don't know for sure, but I gathered he was.

Mr. MAY. Did Mr. Spagnoletti say that Mr. O'Connell would be a little late?

Mr. RODDY. Well, as I recall it, he may have mentioned that he would likely be late.

Mr. MAY. Eventually Mr. O'Connell did arrive and you did have lunch with Mr. O'Connell?

Mr. RODDY. That is correct. Yes.

Mr. MAY. Mr. Spagnoletti did not have lunch with you two?

Mr. RODDY. Oh, no.

Mr. MAY. What happened during the lunch with Mr. O'Connell?

Mr. RODDY. Well, we discussed the problem involved, which amounted to securing compensation for the land itself and also sufficient compensation to take care of the new access road that would be necessary because of the highway, because we could not enter the property in the same fashion as had been previously the case.

Mr. MAY. Did Mr. O'Connell mention he had handled a number of similar cases to yours?

Mr. RODDY. Yes, I believe so. Yes.

Mr. MAY. Did he mention that he was handling other cases in the immediate vicinity of your property?

Mr. RODDY. Well, as I recall it, he did. Yes.

Mr. MAY. Did you discuss fee with Mr. O'Connell at that luncheon?

Mr. RODDY. I don't believe we did at that particular meeting. I am not sure. At least we didn't get into it at any length.

Mr. MAY. What arrangements did you make at the luncheon? Did you arrange with Mr. O'Connell to come down and visit the property?

Mr. RODDY. Well, it was suggested—we didn't make a definite appointment at the lunch for him to visit the property, but I did point out that I thought—so he would have a better understanding of what the property was, that he should actually see the site. And I believe it was left that he would try to make a visit and we would later contact each other as to just when it would be made.

Mr. MAY. Thereafter did you receive a letter from Mr. O'Connell dated April 29, 1959?

Mr. RODDY. Yes. That is correct.

Mr. MAY. Do you have a copy there, Mr. Roddy?

Mr. RODDY. Yes, I do.

Mr. MAY. Would you read that letter to the committee, please?

Mr. RODDY. It says—it is addressed to Mr. Fred M. Roddy, Cumberland Engineering Co., Inc., Post Office Box 216, Providence, R.I.

DEAR MR. RODDY: I am enclosing letter for you to sign and return to me giving me authorization to represent you in your land damage case with the Commonwealth of Massachusetts. I will keep you advised of all developments.

Very truly yours,

JAMES S. O'CONNELL.

Mr. MAY. You stated he mentioned he was enclosing a letter. Did he?

Mr. RODDY. Yes. That is correct.

Mr. MAY. Would you read that, Mr. Roddy?

Mr. RODDY. Yes. It is written on Mr. O'Connell's stationery and it is addressed back to him, James S. O'Connell, Esq., 11 Beacon Street, Boston, Mass.

DEAR SIR: This letter authorizes you to represent me, Fred M. Roddy, president of Cumberland Engineering Co., Inc., in a land taking by the Commonwealth of Massachusetts respecting land located on Pleasant View Street, South Attleboro, Mass.

And there is a blank line for my signature.

Mr. MAY. And that letter is also dated April 29, 1959?

Mr. RODDY. Yes. That is correct.

Mr. MAY. I notice it does not mention a fee.

Mr. RODDY. No; it does not.

Mr. MAY. A fee arrangement?

Mr. RODDY. No, sir.

Mr. MAY. Did you sign that letter, Mr. Roddy?

Mr. RODDY. No; I did not. I did not sign it.

Mr. MAY. What did you do instead?

Mr. RODDY. Actually at that time no action at all was taken of any sort.

Mr. MAY. You directed a letter to Mr. O'Connell dated May 2, 1959?

Mr. RODDY. Yes; I did. I have a copy of that letter here.

Mr. MAY. That is directed to "Dear Mr. O'Connell." It starts:

This is with reference to your letter of April 1959.

Mr. RODDY. That is the first paragraph. Yes.

Mr. MAY. Would you read the body of that letter, please?

Mr. RODDY. The second paragraph reads:

It seems entirely fitting that you represent Cumberland Engineering Co., Inc., in the matter of land taking by the Commonwealth of Massachusetts. Before signing the authorization, however, I should like to discuss further with you just what should be done to best represent our interests. It seems that it would be of advantage if you would pay a visit to my office and take a look at scale drawings of the property and also view the property itself. While at the present I do not doubt that I will engage your services, I should like to go through with the suggested appointment before making final commitment. Should you, of course, not continue to represent us as planned, you would be reimbursed for your time and efforts in the preliminary survey.

Very truly yours,

CUMBERLAND ENGINEERING Co., Inc.,

And this is signed by me.

Mr. MAY. Thereafter was an appointment made with Mr. O'Connell to come down and visit the property?

Mr. RODDY. Yes; that is correct.

Mr. MAY. Did he go down to visit you?

Mr. RODDY. Yes; he did.

Mr. MAY. On what day?

Mr. RODDY. It was—I have a note by my secretary made on the copy of this letter that he visited on May 9, 1959.

Mr. MAY. Did Mr. O'Connell come alone?

Mr. RODDY. No. As I recall it, Mr. Harney came with him on that visit.

Mr. MAY. When Mr. O'Connell and Mr. Harney came to see you, what took place on that occasion?

Mr. RODDY. Well, we sat in my office and looked at a map of the property and then went and took a walk to view the property, and point out the location of the new access road that was needed, and to acquaint Mr. O'Connell with the situation as it existed, and what we felt would need to be done.

Mr. MAY. Did you attempt to discuss fee arrangement with Mr. O'Connell on that occasion?

Mr. RODDY. Yes; I did state, or I did mention that it would be fitting for us to discuss the matter of fee.

Mr. MAY. What did he have to say?

Mr. RODDY. Well, he rather brushed it aside for the time, indicating that we would discuss the fee later and didn't seem to wish to go into detail regarding fee at all during that particular visit.

Mr. MAY. Did you also bring up the subject of Mr. O'Connell possibly working together with your own regular attorney in this matter?

Mr. RODDY. Well, as I recall it, I did mention that it naturally would be fitting that he work in association with our usual attorney somewhat as a specialist in this type of problem. That again he did not discuss, or it was largely forgotten or brushed aside.

Mr. MAY. When Mr. O'Connell left you on that occasion, was it his understanding that he would represent you in this matter?

Mr. RODDY. Actually no commitment was made that he would. Perhaps he certainly would gain an impression of interest on my part, and he may have gained the impression that he in all probability was going to represent us, but then too it was still pointed out that before complete authorization, why, I felt that the matter of fee should be gone into, and I also felt further that there should be some agreement that he collaborate with our regular attorney in connection with this. But those subjects apparently tended to be skipped or not dwelt upon, or were not gone into.

Mr. MAY. Did you eventually retain Mr. O'Connell in this matter?

Mr. RODDY. No, no. We never did retain Mr. O'Connell.

Mr. MAY. When did you decide not to retain Mr. O'Connell?

Mr. RODDY. I should say it was, as I recall, in the late summer or early fall of 1959.

Mr. MAY. Why did you decide not to retain Mr. O'Connell?

Mr. RODDY. The matter was discussed with our regular attorney and then at that time it was drawing near when it was necessary for us either to make a negotiated settlement for the property or to file petition to settle it through the courts, and in discussing it with our present attorney, he pointed out that he did not know anything at all about Mr. O'Connell. He didn't feel that in this instance that he and his office needed to employ the services of Mr. O'Connell, or any other specialist in the land taking, and suggested that we handle

it, and he proceeded to advise the State of Massachusetts that he would represent us in the land taking.

MR. MAY. Were there other reasons for your decision not to retain Mr. O'Connell?

MR. RODDY. Well, yes. Perhaps. I do recall that I read in Business Services, either Kiplinger, or RIA, that there were certain scandals in connection with land takings in other parts of the country, and they made certain suggestions regarding selecting an attorney, and how to go about being sure that you were represented by the proper type of attorney. So that also did make me a bit cautious.

And then, of course, naturally I don't say that that was needed after receiving advice, though, from my present attorney, that he didn't feel the need of a specialist.

MR. MAY. Did there come a point when it seemed to you peculiar that an employee of the State of Massachusetts Department of Public Works was playing so great a part in this matter, together with an attorney? Did that seem peculiar to you?

MR. RODDY. Well, eventually that did. That thought did occur to me. I would say at first, of course, Mr. Harney was a very amiable man and he was being helpful in getting details, and certainly did that. In a sense it didn't seem necessarily too much out of the way or unexpected that he might mention such thing, but after a time, though, and a number of times of mentioning the same attorney, it did occur to me, "Well, I wonder if it is in order."

MR. SCHERER. You said your own attorney said to you, "I don't know anything about O'Connell," and then he recommended against hiring him. Do you know if your own attorney made any investigation as to O'Connell and what connections he might have?

MR. RODDY. I don't believe that he did. I think that he just—I don't think that he was familiar with him, but it developed that he himself had some land-taking experience and he may have been—I don't think he investigated it. I don't believe he did.

MR. SCHERER. Did you make any investigation to determine O'Connell's connections?

MR. RODDY. No. We didn't make any investigation.

MR. SCHERER. How far is this property, that was being taken, from Boston?

MR. RODDY. It is about 38 to 40 miles from Boston.

MR. SCHERER. Was your attorney located in Boston or in your own town?

MR. RODDY. He is located in Attleboro, Mass.

MR. SCHERER. And Attleboro is about how far?

MR. RODDY. Well, it is about 7 or 8 miles from our property.

MR. SCHERER. And O'Connell's office is in Boston?

MR. RODDY. It is in Boston. Yes.

MR. SCHERER. Did Harney at any time represent to you, or indicate, that O'Connell had any connections with anyone that might be helpful?

MR. RODDY. In the course of his various investigations he did mention that Mr. O'Connell had a brother connected with the Governor's office.

MR. SCHERER. Who had a brother?

MR. RODDY. That Mr. O'Connell had a brother connected with the Governor's office.

Mr. SCHERER. Who indicated that he had a connection with the Governor's office?

Mr. RODDY. That was Mr. Harney did do that. Of course, I wouldn't say that he tried to—he was not promoting the idea that we would be interested in employing him because of his political influence, or anything of that sort, which would not have been the case. But since he was given to talking a good deal, he did let drop the idea that he had a brother employed with the Governor's office and the idea being to make it known that Mr. O'Connell was thoroughly acquainted with all the people to be dealt with in this connection.

Mr. SCHERER. In what year was this?

Mr. RODDY. In 1959.

Mr. BLATNIK. Mr. May.

Mr. MAY. Almost a year later, Mr. Roddy, did you receive a letter from Mr. O'Connell?

Mr. RODDY. Yes, I did. I have one. Excuse me just a minute. I have one dated March 7, 1960, that I did receive from Mr. O'Connell.

Mr. MAY. Would you read the body of that letter, if you please, Mr. Roddy.

Mr. RODDY. Yes.

DEAR MR. RODDY: Reference is made to your letter of May 2, 1959, addressed to the undersigned relative to our conversation and conferences concerning your claim against the Commonwealth of Massachusetts arising from eminent domain proceedings affecting your property.

The department of public works is at the present time bringing to a conclusion all of the matters pending in your immediate area. Accordingly, I am in possession of more information than was obtainable at the time of our last conversation and at your immediate convenience I would like the opportunity to discuss it with you.

As time is of the essence, I respectfully suggest that you communicate with my office by phone.

That is dated March 7, 1960.

Mr. MAY. Is it signed? Is that signed?

Mr. RODDY. Yes, it is signed James S. O'Connell, and it is written on his stationery.

Mr. MAY. I notice that the letter is dated March 7, 1960, and in the first sentence reference is made to your letter of May 2, 1959.

Mr. RODDY. That is correct.

Mr. MAY. Sometime previous.

Mr. RODDY. Yes.

Mr. MAY. Did you answer that letter, Mr. Roddy?

Mr. RODDY. Oh, no. No. There was no reply. By that time it was in the hands of our own attorney and it was being handled and placed in the hands of our own attorney during late summer or fall of 1959.

Mr. MAY. It appears that Mr. O'Connell went to some effort in writing these letters and coming down to visit your property. Did you receive a bill from Mr. O'Connell for his services?

Mr. RODDY. No, no. We did not receive a bill. We did not engage his services, though in my letter of May 2 I did state that we would be agreeable to his billing us for the preliminary visit, whether we engaged his services or not; but he never did bill us for that preliminary visit, or send us any bill of any sort.

Mr. MAY. Thank you, Mr. Roddy. Mr. Chairman, once again we have an example of solicitation on the part of an employee of the

department of public works to the property owner in an attempt to persuade the property owner to retain an attorney, once again unsuccessfully.

Mr. Chairman, may we make the series of letters and documents mentioned by Mr. Roddy exhibit 5-A through E?

Mr. BLATNIK. Without objection, it is so ordered.

(The documents referred to were marked for identification and received as Exhibits 5-A through 5-E, and are retained in subcommittee files.)

Mr. WRIGHT. Mr. Chairman, may I ask a few questions?

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Mr. Roddy, do I understand correctly that at no time in your discussions with Mr. O'Connell was a fee discussed?

Mr. RODDY. The details of the fee were not discussed. I did bring it up, but it was passed over, "that, well, we can discuss that later."

Mr. WRIGHT. You attempted on occasion to discuss the proper fee with him and—

Mr. RODDY. He avoided it.

Mr. WRIGHT. And he deferred?

Mr. RODDY. That's right. That's right.

Mr. WRIGHT. And you mentioned you had suggested to him the possibility of his working in collaboration with your regular attorney, and you said that he brushed this off. In what way did he brush it off? Did he seem to feel he did not think it was appropriate to be discussed at that time, or he didn't think it was a very good idea?

Mr. RODDY. Well, he didn't come out and say pointblank that it was not a good idea, but how he brushed it off I don't recall. The only thing is, he seemed to change the subject or get on to something else, and that appeared to be something that, "well, we could get into later. We don't want to do this right now," seemed to be it.

Mr. WRIGHT. You got the impression he didn't want to discuss it or contemplate such an arrangement?

Mr. RODDY. I got the impression he certainly did not want to at that particular time.

Mr. WRIGHT. I see. Thank you.

Mr. MAY. Mr. Roddy, your case is a pending matter?

Mr. RODDY. It is pending in the courts. Yes. There has been no settlement that has been made.

Mr. MAY. Eventually an offer was made by the State to your attorney?

Mr. RODDY. Yes, I understand. I do not have the official notice, but I understand that some offer, or some figure was discussed with my attorney, and in view of our previous discussions that our attorney, Mr. McIntire, and I had, that he decided not—I mean, that no satisfactory negotiation could be made, and that the better thing to do was to file a petition and let the courts decide. So that's what he did in our behalf.

Mr. MAY. What is your understanding of the offer made by the State?

Mr. RODDY. I understand it was 60-odd thousand dollars.

Mr. MAY. Thank you very much, Mr. Roddy.

Mr. CRAMER. I have one question I would like to ask. Then do I understand that these conversations and conferences with O'Connell,

and considerations by you as to whether to employ him or not as your attorney in this matter, then took place from late in 1958—April of 1958?

Mr. RODDY. No.

Mr. CRAMER. Late in 1958?

Mr. RODDY. That was April of 1959, I think. The first contact with Mr. Harney was probably late in 1958, but no—

Mr. CRAMER. Your contact with Harney was late in 1958?

Mr. RODDY. Yes. That is correct.

Mr. CRAMER. And your contact with O'Connell started in early 1959. Is that right?

Mr. RODDY. Well, the first visit we know about was the first of April. The early part of April 1959.

Mr. CRAMER. And there was a letter of May 2, 1959, and a final letter on March 7 of 1960. During this period you had occasion to talk to Mr. O'Connell in the Boston Club, and so forth.

Incidentally, could you tell us where that Boston Club is? We couldn't locate it yesterday.

Mr. RODDY. It is on Beacon Street in Boston, not too far from the statehouse.

Mr. CRAMER. Near the statehouse. During these conversations you say Mr. O'Connell did suggest that he had a brother with the Governor's office. Is that right?

Mr. RODDY. I don't recall that Mr. O'Connell mentioned a brother with the Governor's office. I don't recall that he did.

Mr. CRAMER. He said he had connections with the Governor's office. Is that right?

Mr. RODDY. Yes. It was understood that he apparently and for a long time had done business with the Governor's office. Yes.

Mr. CRAMER. That is all, Mr. Chairman.

Mr. BLATNIK. Thank you very much. We thank you on behalf of the committee, Mr. Roddy, for your helpful testimony and the forthright manner in which you yourself conducted the matter under review.

Mr. RODDY. You are welcome, Mr. Blatnik.

Mr. BLATNIK. The next witness, Mr. Charles N. Logan.

Will you please raise your right hand, Mr. Logan? Do you solemnly swear the testimony you will give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LOGAN. I do.

Mr. BLATNIK. Be seated.

Mr. MAY.

Mr. MAY. What is your full name, Mr. Logan?

TESTIMONY OF CHARLES N. LOGAN, LINCOLN, R.I., OWNER, LOGAN MACHINE CO., SOUTH ATTLEBORO, MASS.

Mr. LOGAN. Charles N. Logan.

Mr. MAY. Where do you reside?

Mr. LOGAN. 32 Westwood Road, Lincoln, R.I.

Mr. MAY. What type of business do you operate, Mr. Logan?

Mr. LOGAN. Special machinery building.

Mr. MAY. What is the name of your company?

Mr. LOGAN. Logan Machine, Inc.

Mr. MAY. Where is that located?

Mr. LOGAN. South Attleboro.

Mr. MAY. Roosevelt Avenue and Main Street?

Mr. LOGAN. Well, that is our mailing address, but we are on Pleasant View Street.

Mr. MAY. Pleasant View?

Mr. LOGAN. Which is not a recorded street.

Mr. MAY. Could you briefly describe the property?

Mr. LOGAN. The property—the building is about 10,000 square feet, which is made up of concrete and metal, and the land is about 22,000 square feet.

Mr. BLATNIK. Can you speak a little more loudly, Mr. Logan?

Mr. LOGAN. Yes, sir.

Mr. MAY. How long have you operated the business in that location?

Mr. LOGAN. About 7 years or so. Since about 1954.

Mr. MAY. Mr. Logan, there came a time when you learned that your property would be affected by the construction of Interstate Highway 95?

Mr. LOGAN. Yes, sir.

Mr. MAY. Who first contacted you on behalf of the State relative to the taking?

Mr. LOGAN. Mr. Harney.

Mr. MAY. Frank L. Harney?

Mr. LOGAN. Yes, sir.

Mr. MAY. When did that happen?

Mr. LOGAN. That would be late 1958.

Mr. MAY. What did Mr. Harney have to say on that first occasion?

Mr. LOGAN. Well, more or less on the design, and so forth. At this particular time the design was going right through the building.

Mr. MAY. The road was going to go through the middle of the building?

Mr. LOGAN. Yes, and incidental generalities, but nothing beyond that until later.

Mr. MAY. In what capacity did you think Mr. Harney was serving at that time?

Mr. LOGAN. Well, he always had blueprints so I assumed he was an engineer.

Mr. MAY. Did Mr. Harney visit you several times thereafter?

Mr. LOGAN. Yes, sir.

Mr. MAY. Did Mr. Harney ask you on one of those occasions what you wanted for your property?

Mr. LOGAN. Yes, sir.

Mr. MAY. What did you say?

Mr. LOGAN. I told him I wanted what it cost us to get in, and what it would cost us to get out, which was in the neighborhood of \$30,000.

Mr. MAY. You told him you had paid some \$21,000 for the building?

Mr. LOGAN. Yes.

Mr. MAY. And you had additional costs of getting in?

Mr. LOGAN. Yes.

Mr. MAY. And fixing up the building, which ran another eight or nine thousand dollars, so you felt you would have to have about \$30,000 to get out of there whole. Isn't that right?

Mr. LOGAN. Yes.

Mr. MAY. Sometime about early April of 1959, you received another visit from Mr. Harney?

Mr. LOGAN. Yes, sir.

Mr. MAY. Could you tell the committee what took place on that occasion?

Mr. LOGAN. Mr. Harney visited me in the early forenoon and asked me if I could go to Boston this afternoon, and I said, "Yes, but what for?" He said, "I wanted you to meet a liaison officer between the Government and the State of Massachusetts." And he said, "Mr. Roddy is going tomorrow."

So I said, "Oh, that's fine. I'll wait and go with Mr. Roddy tomorrow." And he said, "Oh, no, no. We'll go today because he doesn't want to see both of you together."

So I called Mrs. Logan and asked if she wanted to go take a ride to Boston and she agreed, and we went to Boston at 2 o'clock.

Mr. WRIGHT. I am not quite certain of this. Mr. Chairman, may I ask a question? I am not quite certain whom Mr. Harney wanted you to meet. A liaison officer?

Mr. LOGAN. Yes, sir.

Mr. WRIGHT. Between what?

Mr. LOGAN. The Government and the State of Massachusetts.

Mr. WRIGHT. Between the U.S. Government?

Mr. LOGAN. Yes, sir.

Mr. WRIGHT. He wanted you to meet a liaison officer?

Mr. LOGAN. Yes, sir.

Mr. WRIGHT. Between the U.S. Government and the State of Massachusetts?

Mr. LOGAN. That's right, sir.

Mr. WRIGHT. Did he identify it? Would this be the Bureau of Public Roads, or what?

Mr. LOGAN. No, he didn't specify anything of that sort. I knew it was a Government project, so it didn't occur to me to be anything unusual.

Mr. WRIGHT. But he did say he wanted you to meet a liaison officer?

Mr. LOGAN. That's right.

Mr. WRIGHT. Between the U.S. Government and the government of Massachusetts?

Mr. LOGAN. That's right.

Mr. WRIGHT. And Mr. Roddy was going up to meet this same man on the following day?

Mr. LOGAN. Yes, sir.

Mr. WRIGHT. But he wanted you to go on that day in that this person would want to talk to you separately?

Mr. LOGAN. That's right.

Mr. WRIGHT. Thank you.

Mr. MAY. Mr. Harney told you to be up there at 2 o'clock?

Mr. LOGAN. Yes, sir.

Mr. MAY. So you contacted Mrs. Logan and both of you rode up to Boston?

Mr. LOGAN. Yes. And we had some difficulty finding a place to park, so we didn't get there until 2:30.

Mr. MAY. Did Mr. Harney tell you where to go? Did he give you the name of anybody?

Mr. LOGAN. Yes, he did. He gave us the name of James O'Connell and the the address.

Mr. MAY. 11 Beacon Street, Boston?

Mr. LOGAN. Yes. And I was to meet him at 2.

Mr. MAY. You had some difficulty parking that day?

Mr. LOGAN. Yes, sir.

Mr. MAY. What time did you get to Mr. O'Connell's office?

Mr. LOGAN. At about 2:30.

Mr. MAY. And what happened then? Did you talk to his secretary?

Mr. LOGAN. I talked to his secretary and she said Mr. O'Connell was at the statehouse and she expected him back momentarily.

Mr. MAY. When you talked with the secretary, what did you say to the secretary?

Mr. LOGAN. I said, I am Mr. Logan. I have an appointment with Mr. O'Connell." She said, "Yes, he is expecting you, but he is at the statehouse and won't be back for a few more minutes or so."

Mr. MAY. This is an important point, Mr. Chairman. Mr. Harney told Mr. Logan to get up to see Mr. O'Connell at 2 o'clock that day. Mr. Logan didn't make any appointment, but when he got to the office he was expected at the office. Obviously somebody else told O'Connell's office that you would be there.

What happened then?

Mr. LOGAN. Well, I waited and waited until 4 before he showed up. Several calls had come in where she had told him that I was here and was waiting for him, and he intimated he would be back shortly, but he did not get back until 4.

Mr. MAY. What happened to Mrs. Logan?

Mr. LOGAN. She was sitting in a car somewhere on Beacon Street somewhere.

Mr. MAY. And Mr. O'Connell eventually came?

Mr. LOGAN. He came around 4 o'clock.

Mr. MAY. What happened then?

Mr. LOGAN. He asked me into his office and closed the door in back of him and wanted to know what business I was in. And I told him. And he wanted to know—the telephone rang and he had to talk to somebody at the statehouse, and I'm sitting across the desk from him and I can't help but hearing what is going on, and I began to think something is wrong here, but I didn't know what. So when he got done I said, "You're not a government officer, are you?" He says "No." So I said, "Well, why did Mr. Harney give me the impression you were?" And he said, "Oh, I haven't the slightest idea why he should do that." And I said, "Well, he did." He said, "I'm just a hard-working lawyer looking for a job. Now would you like me to represent you?"

And about that time the telephone rang again and he had some more talk with somebody at the statehouse about committees, and chairmen, and so forth. I can't tell you the names of the people he talked with. And after a little while, he asked to be excused because he had

a calendar date on his desk and had to call somebody about an evening meeting that was to be held someplace.

Mr. MAY. Were you impressed that Mr. O'Connell seemed to be a busy man?

Mr. LOGAN. Yes. He gave me to understand that he knew his way around. And when he asked me, do you want me to represent you, I figured I didn't have a lawyer, my lawyer is a Rhode Island lawyer, I didn't have a Massachusetts lawyer, so I couldn't do any better than take him. So I said yes.

He said, "Well, I will call up my secretary and we will make up a little contract."

So she had typed up a contract saying that he was to represent me. And I signed it.

Mr. MAY. Did he mention anything about a fee?

Mr. LOGAN. Nothing in the contract about fee.

And he said then, "What do you want me to do for you?"

And I said, "I want you to do the best you possibly can for me."

And he said, "That is only natural."

By this time the line was to go through the building.

And I said, "I would like to get back what I paid, plus what it cost me to get in and what it cost me to get out."

Mr. MAY. That is all there was to that meeting? You had retained Mr. O'Connell, you left, and called Mrs. Logan and went back home?

Mr. LOGAN. Yes.

Mr. MAY. Later, did you receive a letter dated April 30, 1959, from the department of public works?

Mr. LOGAN. Yes, I did.

Mr. MAY. Notifying you that they had received, the department had received, a letter dated April 28, 1959, from Mr. O'Connell advising the department that he represented you?

Mr. LOGAN (reading):

Unless we hear to the contrary we shall assume that, if and when the taking is made, negotiations will be carried on with your attorney—

signed Herbert Dodge.

Mr. MAY. You were concerned about how much of your property would be taken and what the status was, and you yourself made some effort to find out?

Mr. LOGAN. We had to move, and I was looking around for some other place. But I couldn't make any progress because I didn't know when and how. So it was rather difficult for us to make any agreement with any other place. And there were several other places that were suitable for us in Rhode Island.

Mr. MAY. What did you do?

Mr. LOGAN. Well, I made inquiries myself as to where the highway was going to go through, and so forth. And, finally, Mr. Harney called on me and told me that a change had been made, the line was going to zigzag a little and they were going to move the line instead of taking the buildings.

Mr. MAY. So the taking itself had changed?

Mr. LOGAN. Yes.

Mr. MAY. And at that time the State was only going to take a small portion?

Mr. LOGAN. Yes.

Mr. MAY. But you, yourself, had made efforts at the department of public works office at Taunton and again in Boston?

Mr. LOGAN. Yes; I went there to find out exactly what was cooking.

Mr. MAY. Did you ever call Mr. O'Connell and ask him to find out?

Mr. LOGAN. No, sir.

Mr. MAY. Sometime in 1960 you learned how much money the State was going to offer you for the property? How did you learn that?

Mr. LOGAN. I learned that through Mr. Harney. He came and said the changes had been made; they came through the building or the site of the land; they were taking some of the land, and it was going to be \$10,000.

Mr. MAY. How did he say that?

Mr. LOGAN. He said, "of course, Jim wants 30 percent."

Mr. MAY. Did Mr. Harney say, "Jim and I have arrived at \$10,000"?

Mr. LOGAN. Yes; he did.

Mr. MAY. And he asked you what you thought of that?

Mr. LOGAN. Yes. I didn't think there was anything too much wrong with that.

Mr. MAY. That seemed satisfactory to you. And Harney said that Jim would expect 30 percent of that?

Mr. LOGAN. Yes; he did.

Mr. MAY. Just to establish time, the record shows that the board of commissioners voted October 4, 1960, to make a settlement with Mr. Logan for \$10,000. Did you get your money promptly?

Mr. LOGAN. No; I didn't.

Mr. MAY. What did you do about that?

Mr. LOGAN. I had to go after it myself. I made several efforts to get it. I went to the State department of public works and found that I had been delinquent in not going after it earlier.

Mr. MAY. Did you first go to Mr. O'Connell to see what he could do about getting it?

Mr. LOGAN. Yes; I did. I called his secretary several times and told him that he ought to do something about it, and he said he was doing something, but I never got any precise action.

Mr. MAY. Did you go to Mr. O'Connell personally to ask him to do something for you?

Mr. LOGAN. I went to his office, but never got him. I think I went to his office twice. And while I was in Boston I went on to the State department of public works and saw the department that was handling that, and one of the ladies said that I was rather delinquent, everything had been taken care of—"What is the matter with you, being so slow coming along?" And I told her that it was being handled by my attorney.

Mr. MAY. Mr. Logan, wasn't there an occasion when you discussed these matters with Mr. O'Connell during the investigation that was being conducted?

Mr. LOGAN. Yes; there was.

Mr. MAY. What happened on that occasion?

Mr. LOGAN. He asked me to go slow on the money, that he didn't want to do it himself. So I can't go in and say, "Process Logan," because it might throw some suspicion on it; he would rather if I did anything on it I do it on my own rather than him do it.

Mr. MAY. In other words, you went to your attorney, Mr. O'Connell, to ask him to move this thing along a little better and he said, "Well, there are investigations being conducted now," and he didn't want to push it because if he did it might throw some suspicion on him.

So instead of Mr. O'Connell doing it, he suggested you go ahead?

Mr. LOGAN. Yes.

Mr. CRAMER. If he wasn't even willing to collect the money, what was he doing to earn his money of 30 percent of \$10,000?

Mr. LOGAN. He really didn't do anything. I finally had to do something myself.

Mr. CRAMER. He collected the fee, did he?

Mr. LOGAN. Yes. Incidentally, the check was made out to him.

Mr. CRAMER. I will ask the staff, is that the policy of the State to make the check payable to the State when the State takes land?

Mr. MAY. The check is made out to both the attorney and to the owner; is that right?

Mr. LOGAN. No. In my letter of April 30, it said unless we hear to the contrary, we shall assume that if and when the taking is made, negotiations will be carried on with your attorney. So the check was made out to him.

Let me take that back. The check was made out to me, but given to him.

Mr. WRIGHT. Made out to you but given to him. In the meanwhile, O'Connell had apparently filed with the appropriate department in the State this statement you signed appointing him your attorney when you first were in his office?

Mr. LOGAN. Yes. He made calls on me back in November of 1960, and he wanted me to go to Taunton and sign the papers, and so forth. We had a mortgage on the building.

Mr. WRIGHT. Where is this?

Mr. LOGAN. In Taunton.

Mr. WRIGHT. Is that the name of a town?

Mr. LOGAN. Yes, sir. That is where the recording was.

Mr. WRIGHT. I see.

Mr. CRAMER. For what consideration did you give Mr. O'Connell 30 percent of the fee, if he didn't render any services for you?

Mr. LOGAN. I didn't pay him 30 percent, incidentally.

Mr. CRAMER. You compromised it?

Mr. LOGAN. No. I just asked him how much I owed him, and he said, "How about \$2,000?" and I gave him a check for \$2,000.

Mr. CRAMER. So you paid him \$2,000 instead of the 30 percent he was entitled to?

Mr. LOGAN. Yes.

Mr. CRAMER. Why do you feel that he was entitled to \$2,000 instead of 30 percent when he had rendered no services?

Mr. LOGAN. Well, I felt that he was responsible for some of the work he done.

Mr. CRAMER. Like what? It was settled out of court, wasn't it?

Mr. LOGAN. Yes.

Mr. SCHERER. How much of the land did they take?

Mr. BLATNIK. If you will save your questions until the staff is through, I think it will save some time.

Mr. SCHERER. Had you gone into valuation?

Mr. MAY. No. This whole thing has changed, Congressman, instead of taking all of the land they just took a small portion.

Mr. SCHERER. I was going to see if he got too much for the land they did take. He wanted only \$30,000 for his whole building and I understand that they paid him \$10,000 for a slice of land and he moved out.

Mr. MAY. The department of public works showed that E. Hopkins, for the department, on April 4, 1960, submitted an appraisal for \$10,000. That was approved by E. Stevens of the department for \$10,000. Ernest T. Collins on March 12, 1960, appraised the property at \$12,000. Joseph L. Schwartz on February 4, 1960, appraised the property for \$1,678.60.

Mr. SCHERER. That is what I mean. He did render service.

Mr. WRIGHT. Are these other men fee appraisers?

Mr. MAY. Yes. Hopkins is the appraiser for the Department, and Collins and Schwartz are the fee appraisers.

Mr. CRAMER. And there was a \$9,000 difference, approximately, between the two appraisers?

Mr. SCHERER. He earned his money for the legal influence?

Mr. CRAMER. That is pretty good if you can get it up from a minimum to the maximum appraisal.

Mr. BLATNIK. I think we should make the record first and not make decisions and judgments on rather incomplete circumstantial evidence.

Mr. WRIGHT. May I inquire, for the clarification of the record, the department file shows that E. Hopkins, the department appraiser, established a \$10,000 appraisal; is that correct?

Mr. MAY. Yes, sir.

Mr. WRIGHT. Subsequently two fee appraisers appraised it, and one of them said it was worth \$12,000; is that correct?

Mr. MAY. \$12,000.

Mr. WRIGHT. And another said it was worth how much?

Mr. MAY. \$1,678.60. I might mention that the review board on April 6, 1960, handed down its figure of \$10,000.

Mr. SCHERER. You can expect that from a review board. I started to ask questions on this very subject, because I understood that Mr. O'Connell had earned his fee not as a lawyer but as an influence peddler.

What part of your—they didn't take your building which you asked \$30,000 for?

Mr. LOGAN. They took part of my parking lot.

Mr. SCHERER. What was the size of your parking lot?

Mr. LOGAN. Well, they fixed it so that we may not be able to get in when this thing is finished. And for your information, I would like to say that had I known then what I know now, I wouldn't have settled for \$10,000, because they almost put us out of business while the construction was going on. For weeks we couldn't get in.

Mr. SCHERER. I understand that. That happens. But that is not the element of damages in settling a claim.

Mr. LOGAN. Those were the punitive damages that we could have claimed.

Mr. SCHERER. How much of your parking lot did they take? What was the size of the parking lot?

Mr. LOGAN. I don't know in square feet.

Mr. SCHERER. What part of the parking lot did they take?

Mr. LOGAN. In front of the building, to prevent us from building in front of our building.

Mr. SCHERER. Prevented you from adding some improvements to the front of your building?

Mr. LOGAN. That is right.

Mr. SCHERER. So they took part of your parking space off your front lot?

Mr. LOGAN. Yes.

Mr. SCHERER. How much did they take?

Mr. LOGAN. I don't know in square footage; I really don't know.

Mr. SCHERER. About 10 feet, 5 feet off?

Mr. LOGAN. No, they took a good slice.

Mr. SCHERER. Approximately, sir.

Mr. LOGAN. Well, it was from an angle——

Mr. MAY. Mr. Chairman, I might say this: We are going to have as witnesses Mr. Cohen, we are going to have Mr. Schwartz, we will hear from Mr. Beasley about this property. So in that area about the value of the property we will have a great deal of information later. And much of it isn't known to Mr. Logan.

Mr. SCHERER. I just wanted to get this. They only took part of the front of your lot, right?

Mr. LOGAN. Right.

Mr. SCHERER. And that you used for parking?

Mr. LOGAN. Yes.

Mr. SCHERER. Did they take half of it?

Mr. LOGAN. No, they took a third of it.

Mr. SCHERER. And how many cars did you usually park there?

Mr. LOGAN. Ten to twelve.

Mr. SCHERER. Ten to twelve cars, and they took a third of it. I think Schwartz was right—a thousand dollars.

Mr. BLATNIK. Mr. May?

Mr. MAY. Mr. Logan, about October of 1960 you were interviewed by representatives of the Federal Bureau of Investigation?

Mr. LOGAN. Yes, sir.

Mr. MAY. Thereafter did you receive a visit from Mr. Harney?

Mr. LOGAN. Yes, I did.

Mr. MAY. What happened at that time?

Mr. LOGAN. Well, I also attended a grand jury investigation—there were two of them—and then between the two I was called on by Mr. Harney, and evidently he had been investigated, and he assured me that everything was all right, and he was very friendly with all the people in the FBI, they played football together, and so forth, and things were coming along all right; that I would be getting my money shortly.

At that particular time the warrant office had another summons for me, at that particular time. Two days later I had another one.

Mr. WRIGHT. At this point, I want to make it real clear, he did not say he was a personal friend of J. Edgar Hoover; did he?

Mr. LOGAN. No.

Mr. WRIGHT. Let's get that clear, because somebody might come out in the newspapers with Harney claiming that he was a good friend of J. Edgar Hoover.

Mr. EDMONDSON. I think the practice is to say that the witness claimed to be a friend, the practice is to say that a prominent public official is linked with him. I think that is the prevailing newspaper practice.

Mr. WRIGHT. Right. I don't want J. Edgar Hoover linked to this fellow, let's make it real clear.

Mr. MAY. Along that line, Mr. Congressman, when we talked to Mr. Harney about these matters Mr. Harney pointed out what a great friend he was of Congressman John Blatnik.

Mr. BLATNIK. He was probably thinking of the old song, "Frankie and Johnnie," and all of a sudden we become kinfolks.

Mr. MAY. I want to get this in detail, Mr. Logan.

You have been talked to by a number of investigators, and you had been called before the grand jury. Mr. Harney came to visit you. In essence, he told you that he was friends with everybody, nothing would come of these investigations, you had nothing to worry about, and you would get your money.

Mr. LOGAN. That it was on its way. But it wasn't.

Mr. MAY. Did he also mention to you that he had not told you that Mr. O'Connell was a liaison man?

Mr. LOGAN. Yes. He told me that he told the FBI that he mentioned 10 names to me. And I said, "You didn't."

Mr. BLATNIK. How many did he mention to you?

Mr. LOGAN. Just one.

Mr. BLATNIK. And that was Mr. O'Connell?

Mr. LOGAN. Mr. O'Connell.

Mr. MAY. When Harney said, "I mentioned 10 names to you," what did you say?

Mr. LOGAN. I said, "No, you did not, you only mentioned one." But he said, "In talking with the FBI, I talked fast. Maybe you only got one of them."

Mr. MAY. He told you that he had told the FBI that he had talked fast and you only caught 1 name out of the 10?

Mr. LOGAN. Yes.

Mr. MAY. And you also caught the address?

Mr. LOGAN. He only gave me one of them.

Mr. MAY. He only gave you one. And then you testified before the grand jury again?

Mr. LOGAN. Yes.

Mr. MAY. Shortly after that, did you get a telephone call?

Mr. LOGAN. It was in between the two.

Mr. MAY. In between the two grand jury appearances did you receive a telephone call from Mr. Harney?

Mr. LOGAN. Yes.

Mr. MAY. How did that go?

Mr. LOGAN. He called, and my secretary answered it, and he said, "This is Frank." And she said, "Frank who?" And he said, "You know. Jim's friend." And she still did not know. So she turned it over to me. So I did not know who he was either.

And he said, "Frank Harney. I am up on Roosevelt Avenue. I want you to come up to see me. I am in a white Cadillac."

I said, "Why don't you come down?"

He said, "No, I want you to come up and see me."

So I went up.

Mr. MAY. Excuse me, Mr. Logan. You received a telephone call from Mr. Harney?

Mr. LOGAN. Yes.

Mr. MAY. Who said, "I am sitting up"—where?

Mr. LOGAN. In a white Cadillac up on Roosevelt Avenue.

Mr. MAY. And was that very far from your place of business?

Mr. LOGAN. No. But it was out of sight.

Mr. MAY. He asked you to come up and see him?

Mr. LOGAN. Yes. It was less than 5 minutes' walk.

Mr. MAY. So what happened? Did you go?

Mr. LOGAN. I walked up there.

Mr. MAY. Was your secretary disturbed at that time?

Mr. LOGAN. She was, she watched me go up there and saw me get out of sight and began to worry.

Mr. MAY. She watched you disappear?

Mr. LOGAN. Yes.

Mr. MAY. Why was she worried?

Mr. LOGAN. Well, she knew that there were scandals going on about this time, I had been to the grand jury—and, incidentally, she was called to the next one.

Mr. MAY. So you left your office and walked up the hill. What is that, Main Street?

Mr. LOGAN. Yes.

Mr. MAY. To Roosevelt Avenue?

Mr. LOGAN. Yes.

Mr. MAY. And turned left on Roosevelt?

Mr. LOGAN. Right.

Mr. MAY. And proceeded to the Massachusetts line?

Mr. LOGAN. No. He was in Rhode Island, Roosevelt Avenue, Rhode Island.

Mr. MAY. He was in Rhode Island?

Mr. LOGAN. Yes.

Mr. CRAMER. That was as far as you have got to go to get across the line?

Mr. LOGAN. We were almost on the line.

Mr. CRAMER. He was in another State, across the line?

Mr. LOGAN. Yes.

Mr. MAY. What sort of area was this, a railroad track?

Mr. LOGAN. The railroad track goes across, and the main line goes right by our place, and there is also a spur track that crosses.

Mr. MAY. Was he sitting there in a white Cadillac?

Mr. LOGAN. Yes.

Mr. MAY. What did he say when you approached?

Mr. LOGAN. He asked me to sit down. I sat with him. I didn't think that he could do anything to me. I was a little—not frightened, but I was interested in why he wanted me to come up there.

Mr. MAY. What could make you frightened, any previous experience?

Mr. LOGAN. Well, I had already testified before the grand jury, and I thought he had something he might want to do to me for doing that. But he was very affable and smiled about things and told me that he had also been an investigator.

Mr. MAY. Mr. Logan, when we discussed this matter with you in Boston you told us this, you said when you approached the car Frank Harney said, "Come in and sit down," and you said you were happy to do that because you felt that he couldn't hit you when you were sitting down.

Mr. LOGAN. Yes.

Mr. MAY. And it seemed to me to be a kind of a peculiar way to handle the right-of-way program.

Mr. LOGAN. Well, I wondered why he should go up there and why he shouldn't come down and see me. And I told him I was a little bit interested. And I wasn't afraid of him; I didn't want him to think I was afraid of him.

Mr. MAY. You were alert?

Mr. LOGAN. Yes.

Mr. CRAMER. South of the border, I can understand that.

Mr. BLATNIK. May I say as a side commentary that it is hard to understand why a businessman would have a rendezvous in a clandestine, surreptitious meeting with an employee of the State highway department, and in an atmosphere of fear, real fear, fear of physical, personal harm—is that correct, is that the way you felt?

Mr. LOGAN. Yes.

Mr. BLATNIK. You wouldn't have been surprised at all had he attacked you or assaulted you?

Mr. LOGAN. No, but I would have been ready.

Mr. MAY. How old are you, Mr. Logan?

Mr. LOGAN. Seventy.

Mr. MAY. What sort of a person is Mr. Harney, small build?

Mr. LOGAN. No, he is a heavy man, much heavier than I am, and younger.

Mr. MAY. What did Mr. Harney have to say?

Mr. LOGAN. He went through his story about, I am being investigated, and how everything is all right, he was very friendly with everybody that was in there, and nothing was going to come of it, and I needn't to worry about anything, my money was on the way—which it wasn't—and I wouldn't hear any more about it. And 2 days later I got another summons.

Mr. MAY. Once again, it was to allay your fears and tell you that nothing was going to come of the investigation and that everything was all right?

Mr. LOGAN. Yes.

Mr. MAY. Did he also mention again that he had given you a number of names?

Mr. LOGAN. He told me that, and I said, "No, you didn't."

Mr. MAY. He was telling you how he had answered the questions put to him?

Mr. LOGAN. Yes.

Mr. MAY. I want to thank Mr. Logan very much. He has been of great aid to us. I have no further questions.

Mr. SCHERER. Just one. You actually have gotten your \$10,000 for those 12 parking spaces?

Mr. LOGAN. Yes.

Mr. SCHERER. Did Harney at the time tell you when you were seated in that Cadillac that he knew you got a good price for your property?

Mr. LOGAN. No.

Mr. SCHERER. He didn't say that to you at any time?

Mr. LOGAN. No.

Mr. SCHERER. At the time that you were south of the border in this white Cadillac with Mr. Harney, do I understand that he was discussing with you matters of your testimony before the grand jury?

Mr. LOGAN. He knew what I had said to the grand jury, because that was related to him in his investigation by the FBI, and he knew what the FBI had said to him and what he had said to them, and so forth, and everything was all right.

Mr. WRIGHT. Did he try to convince you at this point that you should not have said—

Mr. LOGAN. He had that in mind.

Mr. WRIGHT. Did you get the impression that he was trying to convince you that you should change your testimony?

Mr. LOGAN. Yes.

Mr. WRIGHT. You did? He was trying to convince you to tell the grand jury that you were in error, that he had given you 10 names instead of 1?

Mr. LOGAN. Yes, sir.

Mr. WRIGHT. And you think this was the purpose of his wanting to talk with you?

Mr. LOGAN. I believe so, although I don't think he knew there was going to be another grand jury.

Mr. WRIGHT. Yet he was hopeful that if you were questioned again on the matter, he could convince you to say that he had given you the names of a number of attorneys rather than one?

Mr. LOGAN. That is right.

Mr. BLATNIK. In other words, he was trying to get you to perjure yourself the way he had, apparently, perjured himself, is that correct?

Mr. LOGAN. Yes.

Mr. WRIGHT. At any time did you ever question Mr. Harney as to why he had identified Mr. O'Connell as a liaison officer?

Mr. LOGAN. I asked him that question myself once, and he said, "I don't recall ever telling you that."

Mr. WRIGHT. Apparently he was, as the chairman said, trying to get you to perjure yourself as he had done himself?

Mr. LOGAN. Yes.

Mr. COOK. Did I understand you to say, sir, that he had knowledge of your testimony before the grand jury?

Mr. LOGAN. Yes.

Mr. COOK. He knew what you had testified to?

Mr. LOGAN. He knew everything I had said. I don't know why.

Mr. CRAMER. What I was getting at, how did he find out? Did you know who he had gotten the information from?

Mr. LOGAN. He talked as though he had been there.

Mr. CRAMER. I understand information before the grand jury is supposed to be secret. And I wondered what his funnel of information was to the grand jury. Did he say?

Mr. LOGAN. No. He seemed to know about what I had said.

Mr. SCHERER. He naturally would, because the prosecutor always says, "Now, Mr. Logan said this, what about it?" So he knows that.

Mr. BLATNIK. He may or may not know, but he is certainly mighty careless of the truth. Apparently he has got quite a skill in giving impressions that he knows people, calls people by their first names, calls the attorney general by his first name and then admits that he may not be recognized by the attorney general. He is good at situations, giving impressions that he knows everything about it, and impressing people.

And he tries to give the impression that everything is in good shape and is going to end up all right. Is that the impression he tried to give you?

Mr. LOGAN. Yes.

Mr. CRAMER. Just one more question.

You ended up getting \$10,000 for a third of your parking lot?

Mr. LOGAN. Yes.

Mr. CRAMER. And the parking lot would park about 12 cars, is that right?

Mr. LOGAN. Yes.

Mr. CRAMER. So you got about \$25 per parking space?

Mr. LOGAN. I would like to tell you that we didn't get enough. We were almost out of business. My own lawyer in Rhode Island thought I should have made arrangements for punitive damages, which we didn't.

Mr. SCHERER. You mean because you were discommoded for such a long time?

Mr. LOGAN. We had to go after contracts, to pull trucks that got stuck in the driveway, and some of the truckers refused to deliver to us.

Mr. CRAMER. The point is, though, you agreed to this amount of settlement before you knew what the punitive damages were going to be, so you agreed to \$25 per single parking space, which is a pretty good price. So I guess he did render substantial service.

Mr. LOGAN. That is your opinion. I don't think I got enough.

Mr. BLATNIK. Mr. Robison?

Mr. ROBISON. Mr. Chairman, I want to inquire of counsel whether he is going to identify at a later time what this grand jury was, was it a Federal or State inquiry?

Mr. MAY. Federal grand jury in Boston.

Mr. ROBISON. Will we have more information about the results of that later on in these hearings?

Mr. MAY. No, Congressman. This committee has never been privileged, has never asked for the record of the grand jury. This is supposed to be confidential, within the grand jury, and we have left it right there.

Mr. ROBISON. Those proceedings are still pending?

Mr. MAY. There have been a number of indictments and convictions.

Mr. CRAMER. That was brought out before our hearing started.

Mr. MAY. There have been a number of convictions.

Mr. ROBISON. Was that the last time you saw Mr. Harney?

Mr. LOGAN. Yes.

Mr. BLATNIK. Mr. Logan, thank you very much. I want to express our appreciation. You have been very helpful. And congratulations. The next witness is Mr. Felix J. Myette, Pawtucket, R.I.

Would you please raise your right hand?

Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MYETTE. I do.

Mr. BLATNIK. Be seated.

Mr. MAY. Mr. Constandy will ask the questions.

TESTIMONY OF FELIX J. MYETTE, PAWTUCKET, R.I.

Mr. CONSTANDY. Would you give the committee your occupation, please?

Mr. MYETTE. I am a real estate salesman.

Mr. CONSTANDY. And by whom are you employed?

Mr. MYETTE. At the moment I am unemployed.

Mr. CONSTANDY. At the moment you are unemployed?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. With whom were you employed?

Mr. MYETTE. C. H. Lawton & Son, 18 East Avenue, Pawtucket.

Mr. CONSTANDY. And for how long had you been employed by C. H. Lawton & Son?

Mr. MYETTE. About 7 years.

Mr. CONSTANDY. And when did you terminate your employment with them?

Mr. MYETTE. Last Friday.

Mr. CONSTANDY. Are you a licensed real estate salesman, broker, or agent?

Mr. MYETTE. A licensed broker in the State of Rhode Island.

Mr. CONSTANDY. You are not licensed in the State of Massachusetts, is that correct?

Mr. MYETTE. That is right.

Mr. CONSTANDY. While you were employed at C. H. Lawton & Son did you learn that the property of the Damort Realty Co. was for sale?

Mr. MYETTE. Yes, I did.

Mr. CONSTANDY. Would you briefly describe the property to the committee? What did it consist of?

Mr. MYETTE. It consisted of about 20,000 feet of land, a large storage shed for lumber of 7,500 feet, and another small building that had been used as an office, and a railroad siding that went from a branch through the building to the end of the property. And that end of the property was all fenced in.

Mr. CONSTANDY. So as the property was improved, it was suitable for pretty much the sole use for lumber?

Mr. MYETTE. It was designed for use entirely for lumber business, yes.

Mr. CONSTANDY. And in addition you had a small building which had been used as an office?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. And when you heard it was up for sale, what did you do?

Mr. MYETTE. Well, as a matter of fact, I solicited the sale of the property, because it was unoccupied for quite some time, it had been occupied by Saxonville Lumber Co., Saxonville, Mass.

Mr. CONSTANDY. They had ceased their operations?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Who did you contact?

Mr. MYETTE. Mr. Busch. I called him, because I thought it might possibly be for sale.

Mr. CONSTANDY. And what did he tell you?

Mr. MYETTE. He said, well, they hadn't made up their minds what they were going to do, they thought they might suspend operations—they had suspended operations, but they had one or two other people that might be interested. And he said later on, "I will let you know what we decide to do."

Mr. CONSTANDY. And did you later speak to Mr. Walter Webb?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Was he not a principal of the Damort Corp., the company that owned the property?

Mr. MYETTE. Yes, he was, he was the owner of the Damort Co.

Mr. CONSTANDY. And Damort was a realty holding company, wasn't it?

Mr. MYETTE. As far as I know, yes.

Mr. CONSTANDY. And the business that operated from that place previously was the Saxonville Lumber Co.?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And Mr. Webb was an officer of both, is that not correct?

Mr. MYETTE. I am not sure about that, but I rather think he was. Mr. Busch was the one I contacted in Saxonville.

Mr. CONSTANDY. When was that?

Mr. MYETTE. Oh, that would be probably still in 1957.

Mr. CONSTANDY. In the middle of the year?

Mr. MYETTE. I would think so, yes.

Mr. CONSTANDY. And you subsequently had a conversation with Mr. Webb?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Did he list the property with your firm?

Mr. MYETTE. Yes, sir, he did.

Mr. CONSTANDY. And did you have an agreement with him as to the commission that would be paid in the event you sold the property before him?

Mr. MYETTE. No, any more than he wanted to know what we worked on, we worked on a 5-percent commission.

Mr. CONSTANDY. So it was understood that if you were successful in selling the property you would receive a 5-percent commission?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And the 5 percent would be figured against the total gross sale, is that right?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Did you make an attempt to sell the property?

Mr. MYETTE. Yes, we did.

Mr. CONSTANDY. Did you obtain any offers for it?

Mr. MYETTE. Yes. I had got one offer, but it was so ridiculously low that I didn't even turn it in.

Mr. CONSTANDY. What was the offer?

Mr. MYETTE. If I recall correctly, it was around \$12,000.

Mr. CONSTANDY. And who made that?

Mr. MYETTE. The State Line Co., John Bourque, who owned the property adjoining it.

Mr. CONSTANDY. They own the adjacent property?

Mr. MYETTE. That is right.

Mr. CONSTANDY. And they made an offer of \$12,000?

Mr. MYETTE. As I recall, that was the figure, yes.

Mr. CONSTANDY. And you didn't feel that was high enough to transmit it to Mr. Webb?

Mr. MYETTE. No, sir.

Mr. CONSTANDY. Did you receive any other offers?

Mr. MYETTE. Not that I recall, sir.

Mr. CONSTANDY. Did you make an effort to sell it?

Mr. MYETTE. Well, we have had a sign on it, but it being what it was, it wasn't easy. As a matter of fact, we have not sold it.

Mr. CONSTANDY. After a time did you begin to hear rumors that a new road was going to go through that area?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. What did that do to your chance of selling?

Mr. MYETTE. First off, I didn't know what was going to happen, exactly where the road was going. So they had a public hearing in Attleboro, and I attended that and looked at the maps and saw that the road that was intended then was going right through the middle of the property.

Mr. CONSTANDY. So there was a good possibility that the property would be taken by the State?

Mr. MYETTE. Entirely; yes.

Mr. CONSTANDY. Had you kept Mr. Lawton advised of the fact that you had obtained this listing?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And he knew you were attempting to sell it?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Did you convey the offer from Mr. Bourque to Mr. Lawton?

Mr. MYETTE. I don't think I did.

Mr. CONSTANDY. On the basis of the information you had, as the rumors persisted that the road was coming, did you thereafter have a conversation or communication with Mr. Webb?

Mr. MYETTE. Yes, sir; I did.

Mr. CONSTANDY. What did you tell him?

Mr. MYETTE. I called him and I told him that I had looked on the map and realized the road was going through the middle of the property, and I would advise him to hang onto it, because I thought the State would be the best buyer.

Mr. CONSTANDY. You thought the State would be the best buyer?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Would you clarify that a little?

Mr. MYETTE. In other words, we had been unable to sell the property, and usually if the property is taken by condemnation the State has always been, to my knowledge, where there is a question of value, there might be a little discrepancy, in other words, that was the buyer in my opinion, which we didn't have.

Mr. SCHERER. What, in your opinion, was the reasonable value of this property?

Mr. MYETTE. I have no idea, sir. I am not an appraiser and I am not qualified to say.

Mr. SCHERER. You said you thought \$12,000 was too low?

Mr. MYETTE. I said it was almost ridiculous.

Mr. SCHERER. So you had some idea of the value of the property?

Mr. MYETTE. I knew that it was worth more than \$12,000; yes, sir.

Mr. SCHERER. You had been in the real estate business how long at that time?

Mr. MYETTE. About 3 years.

Mr. SCHERER. And you have sold other properties during that time?

Mr. MYETTE. Not too much industrial, mostly houses.

Mr. CONSTANDY. Mr. Scherer, we will have additional and probably better evidence of the value of the property as we go along through this.

Mr. SCHERER. I just thought while he was here, if he had an idea, he could give it.

You indicated that \$12,000 was too low, but you had no idea what the value was?

Mr. MYETTE. No; I did not.

Mr. SCHERER. You thought it was worth more than \$12,000 though?

Mr. MYETTE. Yes.

Mr. WRIGHT (presiding). I think if we will let the testimony flow in a professional way, it will be cleared up later.

Mr. SCHERER. When this man tells me there was an offer made of \$12,000 it is natural for me to ask him what the property was worth. I think I have a right to ask that question under the circumstances. I think it is a proper question, and I think we would be derelict if somebody didn't ask it.

Mr. WRIGHT. I think you do have a right, and the witness responded that he did not know.

Mr. SCHERER. I have a right to ask him other questions to determine in my own mind why he doesn't know the value of that property at that time; I am satisfied.

Mr. WRIGHT. Are you through questioning the witness now, Mr. Scherer?

Mr. SCHERER. Yes; but let's not cut me off.

Mr. WRIGHT. Let the Chair say clearly that there is no disposition on the part of the Chair to cut off anybody either now or at any time. I think there are occasions in which the orderly development of the testimony will adduce the information that all of us are seeking. However, I will reiterate that any member of the committee is at liberty to question.

If there are no further questions, Mr. Constandy, will you resume?

Mr. CONSTANDY. Did you thereafter advise Mr. Webb that you felt that it was your best judgment that you should obtain a tenant for the property?

Mr. MYETTE. Yes; I did, because the property was deteriorating, kids were getting in the back door. There were two sliding doors on each end to allow the freight cars to go in, and smaller doors, and the ones on the front the kids didn't bother so much because of the traffic, but in the rear where it was sort of hidden they did. They

got in, and I found at different times embers, in 5-gallon cans that had contained roofing compound, embers where they had had fires. And, of course, it was a frame building and would have gone up like a torch if it had ever gotten going. So I thought it would be better if someone would rent it.

Mr. CONSTANDY. And did you thereafter secure a tenant for it?

Mr. MYETTE. Yes; I did.

Mr. CONSTANDY. I have correspondence here exchanged between yourself and Mr. Thomas E. Goggin.

Mr. MYETTE. Yes.

Mr. CONSTANDY. He wrote you on November 19, 1957, and you replied on November 21 of 1957. The point that we want to make with this correspondence is that the property was rented at a monthly rate of \$75 per month, and the rental was for the same building which had formerly been used as an office.

Mr. MYETTE. That is right, sir.

Mr. CONSTANDY. Was it Mr. Goggin's intention to use that building as a retail sales office for milk and dairy products? Is that correct?

Mr. MYETTE. Yes.

Mr. CONSTANDY. In this letter he makes the statement that—

I would also like to remove the partition or wall in the office building to install the refrigerator. I will have my carpenter replace same and restore the building to good order and condition, reasonable use and wear and tear and unavoidable catastrophies excepted, as the same now are, if and when I vacate the building.

So it was clearly understood that the refrigerator equipment that was to be placed in the building was the property of Mr. Goggin and would be removed by him at the time he terminated his tenancy?

Mr. MYETTE. Yes; that is correct, sir.

Mr. CONSTANDY. That comes up later, Mr. Chairman, when we get into the appraisals of the property.

Did you make any effort to rent the entire premises to one tenant?

Mr. MYETTE. Yes. I had a Broadway Auto Co. that wanted to hire principally the big building for the storage of new cars. But then it developed that the fire marshal wouldn't allow them to put the automobiles in this wooden building.

Mr. CONSTANDY. Because of the combustion engines?

Mr. MYETTE. That is right.

Mr. CONSTANDY. Did you consider possible other tenants that might have use for it such as a trucking company, since it was a large building?

Mr. MYETTE. I don't recall that I had anyone that was interested in it.

Mr. CONSTANDY. At the time you made an effort to secure the best renter you could?

Mr. MYETTE. Yes.

Mr. CONSTANDY. The tenant you ended up with wanted to rent only the small building and pay \$75 a month?

Mr. MYETTE. That is right.

Mr. CONSTANDY. And you thereafter conveyed the information to Mr. Webb that you had rented the building?

Mr. MYETTE. Oh, yes.

Mr. CONSTANDY. And even collected some rent in advance?

Mr. MYETTE. Yes. We had no written agreement or lease, but Mr. Goggin wanted, thought it would be better for him if he were prepaid 4 months so as to give him a chance to move the business in case he had to, give him a little leeway, in other words.

Mr. CONSTANDY. Now, from that first month's rent you deducted a fee of \$37.50 as a commission for the rental, did you not?

Mr. MYETTE. For that period of 4 months you mean?

Mr. CONSTANDY. No, the first month's rent.

Mr. MYETTE. I think it was intended to be for that first period of 4 months, in other words, we didn't take half of the rent for our fee, I don't recall that we did.

Mr. CONSTANDY. \$37.50 represented your fee for some of the rental for that period?

Mr. MYETTE. That is right.

Mr. CONSTANDY. Did you also inform Mr. Webb in that letter—

The adjoining property owner—

that is Mr. Bourque—

is really the logical one to purchase, and on several occasions we have almost had him to the point.

How much were you asking for the sale of the building at that time?

Mr. MYETTE. Well, we didn't have any price on the building, the property. It has been brought to my mind that Mr. Bourque made an offer, I don't recall that he ever made it to me, except the one that I told you about, the \$12,000.

Mr. CONSTANDY. On December 6, 1957, Mr. Webb addressed a letter to the mortgagee of the property, the Rhode Island Hospital Trust Co.

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. He informed them that he had purchased the entire interest of the Danmott Corp. and now was the sole owner, Mr. Bourque no longer had any interest, is that correct?

Mr. MYETTE. Yes, I believe so.

Mr. CONSTANDY. And he sent a copy of that letter to you, did he not?

Mr. MYETTE. Yes.

Mr. CONSTANDY. There appears on the letter, the second page, a note addressed to you, Mr. Myette, which I will read:

This change in ownership allows me to drop my idea about price. I believe you can work quietly on a net price of \$20,000 or more for a January sale. Perhaps Mr. Bourque will up his offer on the theory that Webb has sole ownership and will cut the \$23,000 price for a quick sale—

with the initial signature, "W.M.W."

So it appears at that time you had been asking \$23,000 for the property, and Mr. Webb in his note to you expresses his willingness to accept a net figure of \$20,000, is that correct?

Mr. MYETTE. Yes, sir; it would appear that way.

Mr. CONSTANDY. Were you able to successfully conclude the matter with Mr. Bourque on that basis?

Mr. MYETTE. No, sir; I wasn't.

Mr. CONSTANDY. You wouldn't take 20 for it?

Mr. MYETTE. I didn't talk with him about that. I believe Mr. Lawton did, but I didn't.

Mr. CONSTANDY. You believe Mr. Lawton did?

Mr. MYETTE. Yes, but I didn't, as I recall.

Mr. CONSTANDY. Did you convey this information from Mr. Webb to Mr. Lawton that you would now accept \$20,000?

Mr. MYETTE. I can't be specific about it, but I presume if I did in the normal course of business I would probably mention it.

Mr. CONSTANDY. Some time in May of 1959 did you receive a telephone call from Mr. Frank Harney?

Mr. MYETTE. Yes, I did.

Mr. CONSTANDY. Did he introduce himself? Did he tell you what his employment was?

Mr. MYETTE. No, he didn't. He mentioned the State board of public roads, but not specifically what he did.

Mr. CONSTANDY. What did he say in this conversation?

Mr. MYETTE. He said, I think, if I recall correctly, "I am from the State board of public roads," in regard to his identification.

Mr. CONSTANDY. What else did he say?

Mr. MYETTE. He said, "You have been handling this property?"

And I said, "Yes, we have"—because I think at that time we had a sign on the property—no, I will take that back. I think he contacted Mr. Damort first.

Mr. CONSTANDY. He contacted the tenant?

Mr. MYETTE. And found out that we were handling the property, yes.

Mr. CONSTANDY. What did Mr. Harney tell you at that time?

Mr. MYETTE. Well, we looked over the property—

Mr. CONSTANDY. Did he ask you to meet him there?

Mr. MYETTE. Yes, he called me by phone and asked me to meet him at the property.

Mr. CONSTANDY. Did you?

Mr. MYETTE. Yes.

Mr. CONSTANDY. What did you do when you got there?

Mr. MYETTE. We looked over the property and we spoke about the State taking it, and was it owned by the Damort Land Co., and so forth. And I gave him the information I had on the property.

Mr. CONSTANDY. Was anyone beside Mr. Harney along at that time?

Mr. MYETTE. There was someone else along, but he sat in the car, I don't know.

Mr. CONSTANDY. The man with him sat in the car?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Was that a State department of public works car?

Mr. MYETTE. I think not, I think it was a private car.

Mr. CONSTANDY. So you gave him the basic information about the property, and told him where he might get the keys for it?

Mr. MYETTE. Yes. As a matter of fact, I think the keys were hanging up in the room.

Mr. CONSTANDY. Up to this time, Mr. Myette, had you ever had any experience yourself in taking property by the State or anyone else by eminent domain?

Mr. MYETTE. No, sir; I had not.

Mr. CONSTANDY. This was a new experience to you?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. And did you subsequently meet Mr. Harney at the property?

Mr. MYETTE. Yes, I did.

MR. CONSTANDY. Was it some time shortly thereafter?

MR. MYETTE. One or two meetings after that.

MR. CONSTANDY. Was Mr. Lawton with you?

MR. MYETTE. Yes.

MR. CONSTANDY. Was there anyone there with Mr. Harney?

MR. MYETTE. I don't think so, I don't recall.

MR. CONSTANDY. Will you relate the conversation you had at that time with Mr. Harney?

MR. MYETTE. Of course we talked, and I introduced Mr. Lawton at that time, Mr. Lawton had never met him, and he said that the property was going to be taken, and it was his opinion that it would be better if Mr. Webb had someone in Boston looking out for his interest, inasmuch as he thought it would be beneficial in getting as much money as possible.

MR. CONSTANDY. Did he say someone, or did he say an attorney?

MR. MYETTE. I think an attorney is the way he put it; yes, sir.

MR. CONSTANDY. What did you say about that?

MR. MYETTE. Well, I thought it was all right.

MR. CONSTANDY. Did Mr. Harney thereafter give you the name of an attorney?

MR. MYETTE. Yes, he did, he gave me the name of Mr. O'Connell.

MR. BLATNIK (again presiding). One name or several names?

MR. MYETTE. Just one name.

MR. BLATNIK. In the previous case he also gave 1 name and then claimed he had given 10 names. Was Harney a fast talker, was it possible that he gave 10 names and you only caught 1?

MR. MYETTE. Not that fast a talker.

MR. BLATNIK. The only one that you caught was the O'Connell name?

MR. MYETTE. Yes.

MR. BLATNIK. And Harney was a fast talker?

MR. MYETTE. Extremely so.

MR. CONSTANDY. Did he give you Mr. O'Connell's address and phone number at the time?

MR. MYETTE. I don't recall about the phone number, but he gave me the address.

MR. CONSTANDY. What did Mr. Harney have to say in connection with Mr. O'Connell and how Mr. Webb would be better represented by having him?

MR. MYETTE. He said Mr. O'Connell was very familiar with the public works department of Boston, and that he had a brother who was, as I understood it, secretary to the Governor, he was in the Governor's office, and it would be very beneficial if Mr. Webb had someone that knew his way around and would do the most for him.

MR. CONSTANDY. Who did he suggest could do the most for him, someone such as Mr. O'Connell?

MR. MYETTE. I got the impression, I don't know, but he wasn't very specific about it, but I got the impression that if you had someone up there that knew their way around you could expedite the thing, get him as much money as anyone else could, more than he could himself.

MR. CONSTANDY. Were you left with the impression that if Mr. O'Connell were retained that the figure that Mr. Webb might get for his property would be a pretty good figure?

Mr. MYETTE. Yes, I get the impression that it would, yes.

Mr. CONSTANDY. Did you discuss the value of the property at all with Mr. Harney?

Mr. MYETTE. No, sir; I didn't.

Mr. CONSTANDY. Did you tell Mr. Harney what price you had been asking for the property?

Mr. MYETTE. I don't recall that I did, sir.

Mr. CONSTANDY. That conversation was about May of 1959?

Mr. MYETTE. Yes, it was in the spring of 1959; yes, sir.

Mr. CONSTANDY. And after your conversation with Mr. Harney did you thereafter call Mr. Webb?

Mr. MYETTE. Yes, I did.

Mr. CONSTANDY. The same day or shortly thereafter?

Mr. MYETTE. Shortly thereafter, I don't recall the exact date.

Mr. CONSTANDY. And what did you tell Mr. Webb?

Mr. MYETTE. I told Mr. Webb of our conversation, of my conversation with Mr. Harney.

Mr. CONSTANDY. Did you tell him that Mr. Harney had recommended that Mr. Webb hire Mr. O'Connell to represent him?

Mr. MYETTE. Yes, I did.

Mr. CONSTANDY. And did you tell Mr. Webb why Mr. Harney thought it would be a good idea?

Mr. MYETTE. Yes, sir; I did.

Mr. CONSTANDY. What did Mr. Webb say?

Mr. MYETTE. Well, he said, "What do you think?"

And I said, "Well, it has been done before, and I don't see any reason why it wouldn't be a good idea."

Mr. CONSTANDY. What was done before?

Mr. MYETTE. People who owned property had hired attorneys to represent them.

Mr. CONSTANDY. Particular kinds of attorneys?

Mr. MYETTE. Well, I don't know of any particular kind of attorney.

Mr. CONSTANDY. One that at least holds forth the prospect of getting a good figure?

Mr. MYETTE. Well, one that probably had handled other cases like this.

Mr. CONSTANDY. And was well connected?

Mr. MYETTE. Yes.

Mr. CONSTANDY. What did Mr. Webb conclude finally?

Mr. MYETTE. Well, he said, "What do you think?"

And I said, "I think it is probably a good idea."

And he said, "I am tied up here in Boston with my business." And he said, "You have been handling the property right along, why don't you take care of it?"

Mr. CONSTANDY. And he suggested that you come to Boston, is that right?

Mr. MYETTE. No, he didn't suggest that I come to Boston, but he suggested that I take care of that end of it, which I did.

Mr. CONSTANDY. Did you speak to Mr. Lawton about the conversations that he had had with Mr. Webb?

Mr. MYETTE. Yes, I did.

Mr. CONSTANDY. And what did you do thereafter?

Mr. MYETTE. And then we made an appointment with Mr. O'Connell; Mr. Lawton and I went down to see him at his office.

Mr. CONSTANDY. You called Mr. O'Connell's office?

Mr. MYETTE. That is right, sir.

Mr. CONSTANDY. Did you call more than once?

Mr. MYETTE. Yes; I think we did. It is kind of difficult to remember. I called him a lot of times in the course of this thing, but in the beginning I don't know how many times I called to get an appointment; I rather think not too much in the beginning, possibly one or two.

Mr. CONSTANDY. Did you speak directly to Mr. O'Connell?

Mr. MYETTE. No; I talked first to his secretary.

Mr. CONSTANDY. You talked to his secretary.

Did you finally make an appointment with her for you to see Mr. O'Connell?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And then you and Mr. Lawton went to Boston?

Mr. MYETTE. Yes.

Mr. CONSTANDY. To keep the appointment that you had made?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And that would be about June 1959?

Mr. MYETTE. I am not sure of the date, but it would be in that area.

Mr. CONSTANDY. Between the time you made the appointment and the time that you and Mr. Lawton went to Boston, did you have occasion to speak with Mr. Harney?

Mr. MYETTE. Between those two times?

Mr. CONSTANDY. Yes, sir.

Mr. MYETTE. No, sir; I do not recall that we did.

Mr. CONSTANDY. Did you tell Mr. Lawton that you were going to see Mr. Harney, or convey it to him in any way?

Mr. MYETTE. I do not think so.

Mr. CONSTANDY. You and Mr. Lawton got to Boston?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. And you went to Mr. O'Connell's office?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. And what did you find there?

Mr. MYETTE. Mr. Harney.

Mr. CONSTANDY. Was Mr. O'Connell there?

Mr. MYETTE. Not at the moment; he came in a few minutes later.

Mr. CONSTANDY. You had not told Mr. Harney you would be there?

Mr. MYETTE. No, sir.

Mr. CONSTANDY. But he was there waiting for you?

Mr. MYETTE. Yes, sir; he was there.

Mr. CONSTANDY. Did he expect you?

Mr. MYETTE. Well, I rather think so. He was not surprised.

Mr. CONSTANDY. Did you have conversation with Mr. Harney at that time?

Mr. MYETTE. No; we just passed the time of day.

Mr. CONSTANDY. Did you make reference to Mr. O'Connell, or did he?

Mr. MYETTE. Well, he may have said—I do not recall exactly what he did say, but it may have been along the line that Mr. O'Connell is a good lawyer, and he would be very helpful to Mr. Webb.

MR. CONSTANDY. And did there come a time when Mr. O'Connell arrived?

MR. MYETTE. Yes.

MR. CONSTANDY. Were you introduced to him?

MR. MYETTE. Yes, sir.

MR. CONSTANDY. By whom?

MR. MYETTE. Well, I do not know. He came in, and—maybe it was not; I just assumed that it was Mr. O'Connell; I had never met him before.

MR. CONSTANDY. Did you then speak with Mr. O'Connell?

MR. MYETTE. Yes, sir.

MR. CONSTANDY. Did you tell him that Mr. Harney had recommended you people to him?

MR. MYETTE. Yes, sir.

MR. CONSTANDY. Did you tell him that Mr. Harney said it was best to have somebody in Boston to represent the property owner to kind of smooth the way?

MR. MYETTE. That is right; yes, sir.

MR. CONSTANDY. What other conversation did you have with Mr. O'Connell?

MR. MYETTE. Well, he said—I said, "Would you represent Mr. Webb?"

And he said, yes, he would take the case but he would first have to have written authority, a letter of authority from Mr. Webb appointing him as his attorney or agent.

MR. CONSTANDY. Did Mr. Harney remain present during the course of these conversations?

MR. MYETTE. Yes; he was there.

MR. CONSTANDY. Did you have the impression that Mr. O'Connell had some prior knowledge of you, Mr. Lawton, and the property?

MR. MYETTE. Yes, sir.

MR. CONSTANDY. He knew why you were there?

MR. MYETTE. Yes, sir.

MR. CONSTANDY. Did he bring any papers or data from Mr. O'Connell?

MR. MYETTE. At that time, no, sir.

MR. CONSTANDY. Did you explain to him what the property was; what it consisted of?

MR. MYETTE. I don't recall that I did. I have an idea that Mr. Harney knew about the property. I don't recall that I brought any information.

MR. CONSTANDY. That is the point; was it necessary for you to tell Mr. Harney what the property consisted of? Or perhaps the indication was that Mr. Harney also knew?

MR. MYETTE. I think he knew what the property was; yes.

MR. CONSTANDY. You made the statement to us, Mr. Myette, that as far as the property was concerned, "he knew more about it than we did"; is that correct?

MR. MYETTE. Yes; I guess you are right.

MR. CONSTANDY. Did you discuss fees with Mr. O'Connell?

MR. MYETTE. No, sir; we didn't.

MR. CONSTANDY. Did you convey to him the fact that you had been attempting to sell it for as low as \$20,000?

Mr. MYETTE. No, sir; I don't recall that.

Mr. CONSTANDY. Did you tell Mr. O'Connell when Mr. Webb bought the property?

Mr. MYETTE. No, sir.

Mr. CONSTANDY. Did you know that?

Mr. MYETTE. Gee, I don't know; I can't tell you that.

Mr. CONSTANDY. How long did the meeting last?

Mr. MYETTE. It was a few minutes; it didn't take very long. We left with authority from Mr. Webb for Mr. O'Connell.

Mr. CONSTANDY. During the course of these conversations did Mr. Harney speak at all?

Mr. MYETTE. I don't recall anything he said.

Mr. CONSTANDY. Did you have any suspicion when you went to Mr. O'Connell's office and you found that the department of public works employee who had recommended Mr. O'Connell to you in Mr. O'Connell's office, and discussed the matter of being retained by Mr. Webb?

Mr. MYETTE. Would you repeat that, sir, I don't think I got it.

Mr. CONSTANDY. I wonder whether the fact that Mr. Harney had first recommended Mr. O'Connell, and then you found him in Mr. O'Connell's office at the time you were there to discuss hiring Mr. O'Connell to represent Mr. Webb, did that make you suspicious?

Mr. MYETTE. Well, I didn't know at that time truthfully what Mr. Harney's position was on the State board of public roads. I understood he was in the State board of public roads, but I didn't know what his occupation was. I have since learned he was a negotiator.

Mr. CONSTANDY. Did you at least think it was peculiar that you found Mr. Harney there?

Mr. MYETTE. Well, it wasn't ordinary.

Mr. CONSTANDY. Did you have any impression that they were working together?

Mr. MYETTE. Yes, definitely, otherwise I wouldn't have known Mr. O'Connell.

Mr. CONSTANDY. Was it your feeling at that time that there would be something in this for Mr. Harney?

Mr. MYETTE. Well, I don't think that I really had any feeling about the matter.

Mr. CONSTANDY. In discussing this earlier with you the comment you made was, you realized, of course, and no doubt said it, that O'Connell and Harney must be working together, you thought O'Connell would in some way compensate Harney with a fee of some sort which he would collect from Webb or somebody in the office. Was that the atmosphere in which you discussed Mr. Webb's business, that Mr. Harney had that relationship?

Mr. MYETTE. Yes, I would say so.

Mr. CONSTANDY. He was not there as a disinterested party?

Mr. MYETTE. No.

Mr. CONSTANDY. He didn't just happen to be there?

Mr. MYETTE. No.

Mr. CONSTANDY. You, yourself, and Mr. Lawton expected to receive a commission, did you not?

Mr. MYETTE. Not a commission, sir.

Mr. CONSTANDY. We will pass that for the minute.

Now, you finally saw Mr. O'Connell. Mr. Webb is also from Boston?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Mr. Webb's office is about 10 minutes away from Mr. O'Connell's office?

Mr. MYETTE. That is right.

Mr. CONSTANDY. You traveled some 40 miles from Pawtucket. Did you also go to Mr. Lawton's office and convey the information to him that you had been to see Mr. O'Connell?

Mr. MYETTE. No, sir, I didn't.

Mr. CONSTANDY. Did you learn anything from going to see Mr. O'Connell?

Mr. MYETTE. I learned this much, that he said he would act as Mr. Webb's attorney or agent, and I found out what he wanted, he wanted the authorization from Mr. Webb, and that is what I went up to find out, how it would be handled. And I found that out. And when I returned I called Mr. Webb and told him.

Mr. CONSTANDY. After you returned to Pawtucket?

Mr. MYETTE. That is right.

Mr. CONSTANDY. You conveyed this information to Mr. Webb?

Mr. MYETTE. That is right.

Mr. CONSTANDY. What did Mr. Webb say?

Mr. MYETTE. Well, he said, Ok, he would write him a letter authorizing him to act as his agent.

Mr. CRAMER. There was no fee discussed up to this point, is that right? You were giving him a blanket authorization to represent him? There was no fee discussed?

Mr. MYETTE. I didn't make the authorization.

Mr. CRAMER. I didn't say you did. But you had been helping with the negotiations.

Mr. MYETTE. Right.

Mr. CRAMER. And there was never a fee discussed?

Mr. MYETTE. No, sir.

Mr. CRAMER. And Webb was willing to give him authority to represent him without even discussing a fee?

Mr. MYETTE. As far as I know, that is right. He didn't discuss a fee with me, and I don't think he did with Mr. O'Connell at that time.

Mr. CONSTANDY. Some time after this, did you have occasion to again see Mr. Harney?

Mr. MYETTE. Well, at a time later we went up, Mr. Lawton and I went up to see Mr. O'Connell.

Mr. CONSTANDY. Then prior to that did you come across Mr. Harney on the property, or did Mr. Harney call you?

Mr. MYETTE. Well, not in that sequence. I think, if I recall, I saw Mr. Harney a total of five times.

Mr. CONSTANDY. The next time that you saw him, where was that, or heard from him?

Mr. MYETTE. The next time, as I recall it, and remember it, was the second visit to Mr. O'Connell.

Mr. CONSTANDY. Would you tell us how that came about?

Mr. MYETTE. Yes. You see, this went over a period of time when it was apparent that negotiations were going on between Mr. O'Connell and whoever it was he was talking to in the public works department.

Mr. CONSTANDY. If anyone?

Mr. MYETTE. That, of course, I don't know. But Mr. Webb was becoming quite anxious. And he kept calling me, I wouldn't say every few days, but he called me a few times and wanted to know what I found out from Mr. O'Connell in regard to what progress was being made. And I tried to call Mr. O'Connell, and I called his office, and he wasn't there, and I asked to have him call me, and I never did hear from him at all.

Mr. CONSTANDY. You called him and asked him to call back, but he didn't?

Mr. MYETTE. That is right. So eventually Mr. Lawton and I went down to his office.

Mr. CONSTANDY. I am sorry, I didn't hear you.

Mr. MYETTE. Mr. Lawton and I went down to Mr. O'Connell's office.

Mr. CONSTANDY. And Mr. Lawton went from Pawtucket to Boston?

Mr. MYETTE. That is right.

Mr. CONSTANDY. Did you have an appointment?

Mr. MYETTE. I think I did, yes.

Mr. CONSTANDY. And in the same way you called the girl for an appointment?

Mr. MYETTE. That is right.

Mr. CONSTANDY. At the time you got there did you find Mr. O'Connell there?

Mr. MYETTE. No, I didn't.

Mr. CONSTANDY. Did you find Mr. Harney there?

Mr. MYETTE. Mr. Harney was there.

Mr. CONSTANDY. Mr. Harney was there again?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Did you have conversation with him at that time?

Mr. MYETTE. No, not any more than that we were down there to find out what was going on, what progress was being made.

Mr. CONSTANDY. Did you tell that to Mr. Harney?

Mr. MYETTE. I believe so.

Mr. CONSTANDY. What did he say?

Mr. MYETTE. Well, he said, "I will tell him when he comes in," or words to that effect, I don't recall exactly.

Mr. CONSTANDY. Did he give you the impression that things were being done?

Mr. MYETTE. Oh, yes.

Mr. CONSTANDY. By whom?

Mr. MYETTE. By Mr. O'Connell.

Mr. CONSTANDY. Did he make any statement that led you to believe that he was doing anything?

Mr. MYETTE. No, I don't recall that he did.

Mr. CONSTANDY. And later did Mr. O'Connell come?

Mr. MYETTE. Yes, he did.

Mr. CONSTANDY. And you had a discussion with him, then?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And what did you tell him?

Mr. MYETTE. I asked him—I told him that Mr. Webb was anxious to get the thing settled and wanted to know what progress had been made, and how near the settlement was, and so forth.

Mr. CONSTANDY. What did he say?

Mr. MYETTE. He said, "Well, you know these things take time, and they have to pass through so many hands, you can't rush them. you have to take your time. But progress is being made, and I think within a short time we will have something for you."

Mr. CONSTANDY. Did he give any indication as to what progress was being made?

Mr. MYETTE. No, nothing; he didn't pinpoint anything.

Mr. CONSTANDY. He gave you no indication of what figure you might expect?

Mr. MYETTE. No, sir; he didn't.

Mr. CRAMER. He didn't say who he had been talking to or what he had been doing, O'Connell?

Mr. MYETTE. He didn't tell me: no, sir.

Mr. CRAMER. You didn't ask him what he had been doing to try to sell the property and who he had been talking to?

Mr. MYETTE. No, I didn't tell him I was trying to sell the property, I asked him what progress he had made in negotiations.

Mr. CRAMER. And what did he say?

Mr. MYETTE. His reply was just as I say, that progress was being made, and it took time and passed through many hands, and you can't rush these things.

Mr. CRAMER. And at that time was anything discussed about what the property was worth?

Mr. MYETTE. No.

Mr. CRAMER. And what he was trying to get out of it?

Mr. MYETTE. No.

Mr. CRAMER. Or what his fee was going to be?

Mr. MYETTE. No, sir.

Mr. CRAMER. And was it your responsibility to represent the seller?

Mr. MYETTE. No. The only thing that I did was to make a contact between O'Connell and Webb.

Mr. CRAMER. He hadn't even talked to Webb yet, had he?

Mr. MYETTE. He had gotten some authorizations from Webb by letter.

Mr. CRAMER. But he had never discussed it with him other than that, right?

Mr. MYETTE. Not that I know of.

Mr. CRAMER. You were the one handling the negotiations, weren't you?

Mr. MYETTE. No, I wouldn't put it that way.

Mr. CRAMER. How would you put it?

Mr. MYETTE. I would put it just as I told you, that I was instrumental between Webb and O'Connell in regard to his authorizing Mr. O'Connell to act for him as agent. That was the extent of my involvement in that.

Mr. CRAMER. That is all.

Mr. CONSTANDY. Mr. Myette, there did come a time, did there not, when you came upon Mr. Harney back in South Attleboro?

Mr. MYETTE. I don't recall that, sir.

Mr. CONSTANDY. Do you remember seeing Mr. Harney and asking him how things were going, and he told you why he was down there?

Mr. MYETTE. No, I don't.

Mr. CONSTANDY. Earlier when we talked to you you said that either you accidentally came upon him in the premises or you received a

telephone call, whichever way the conversation took place, you asked him how things were going and he said that everything was being done that could be done. And he said that his reason for being down in South Attleboro was that he had a number of other properties in the area that he was concerned with, and he mentioned to you Mr. Logan, Mr. Roddy, and other properties. Do you recollect that?

Mr. MYETTE. It might well have happened, but I don't recall it.

Mr. CONSTANDY. Do you recollect telling it to us?

Mr. MYETTE. Well, I may have.

Mr. CONSTANDY. You made no notes of that at the time?

Mr. MYETTE. I made no notes, so I really don't know.

Mr. CRAMER. What date?

Mr. CONSTANDY. We talked to Mr. Myette on several occasions, twice in Pawtucket, and once in Boston.

Mr. MYETTE. Twice in Boston—once, anyway.

Mr. CRAMER. How long ago?

Mr. CONSTANDY. I guess most of that was from the period of September last through December, was it not?

Mr. MYETTE. You are speaking now of——

Mr. CONSTANDY. Either August or September of 1961, Mr. May and I, or someone from the staff had spoken to you before.

Mr. MYETTE. I was questioned, of course, by a number, and it was hard for me to say who.

Mr. CONSTANDY. There is a problem, isn't there, speaking from the standpoint of a witness on these things, in being contacted by a number of these people, inquiries from different agencies for different purposes?

Mr. MYETTE. That is right.

Mr. CRAMER. What is the problem, if you tell us all the same thing, what is the problem about that?

Mr. MYETTE. There is no problem except it is nerve-racking.

Mr. CRAMER. I can understand that. If you tell them all the same thing, I can't see——

Mr. MYETTE. I have told what I remember and as near as I know to be the truth.

Mr. JONES (now presiding). Does the committee have further questions?

Mr. SCHERER. Yes; just a moment. What length of time, Mr. Myette, was consumed in all these negotiations; that is, from the time you first attempted to dispose of the property and you had the first offer of \$12,000, which you said wasn't enough, until you finally got out of this picture?

Mr. MYETTE. Until I finally what?

Mr. SCHERER. Until finally the matter was determined, until you got out of the picture, how many months?

Mr. MYETTE. Well, we listed the property, I think, as I remember correctly, in 1957.

Mr. SCHERER. And that is when you had this offer of \$12,000?

Mr. MYETTE. Shortly thereafter.

Mr. SCHERER. Shortly thereafter you had this offer of \$12,000, and you told us that you didn't think that was enough.

Now, are you telling us that you still have no idea of the market value of this property after all of these negotiations you conducted?

Mr. MYETTE. That is right.

Mr. SCHERER. You formed no idea?

Mr. MYETTE. No, sir.

Mr. SCHERER. And you were the man that was selling the property?

Mr. MYETTE. We had it for sale; yes, sir.

I might add, sir, that an appraising of real estate——

Mr. SCHERER. I understand that, you are not an appraiser, but it is difficult for me to understand, sir, that a man that is in the real estate business, although he is not an appraiser, who has a piece of property for sale, who says that when an offer is made of \$12,000 that he considered it way too low, that it was so low that he wouldn't even present it for the owner, the offer, and then he has another offer for \$20,000—I can't understand how he can say that somebody wouldn't take it.

Mr. CONSTANDY. There was an offer, Mr. Scherer, and the price was reduced from——

Mr. SCHERER. From \$23,000 to \$20,000, and the man still wouldn't buy it. And then you had all of these other negotiations, and still as of this moment you haven't formed an opinion as to the reasonable market value of that property.

Mr. MYETTE. I have no opinion that will stand up in anybody's court, or anything else.

Mr. JONES. Are there any further questions?

Mr. CONSTANDY. We have some additional questions for Mr. Myette, if he could resume after the recess.

Mr. CRAMER. How many more witnesses do we have? Could we get this hearing over this morning?

You have got one more witness?

Mr. MAY. He will be fairly lengthy.

Mr. JONES. How many more questions do you have?

Mr. SCHERER. May I respectfully suggest that if we are coming back after lunch that we come back at 2? We have been away from our desks all morning.

Mr. JONES. The subcommittee will recess until 2 o'clock.

And, Mr. Myette, we will expect you to be back at 2 o'clock.

(Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Present: Representatives Blatnik (presiding), Baldwin, Cramer, Edmondson, Fallon, Gray, Jones, Kluczynski, Robison, Scherer, Schwengel, and Wright.

Mr. JONES. The subcommittee will come to order. Mr. Myette. Counsel.

TESTIMONY OF FELIX J. MYETTE—Resumed

Mr. CONSTANDY. Mr. Myette, you testified there came a second occasion for you to go to Boston with Mr. Lawton to again discuss the proceedings with Mr. O'Connell. After that visit did you become aware Mr. Lawton was engaged by the department of public works to make an appraisal of the Damort property?

Mr. MYETTE. Not at that time.

Mr. CONSTANDY. Subsequent to that?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. Mr. Myette, after you returned from your visit sometime thereafter did you become aware that Mr. Lawton had been

engaged by the State to make an appraisal of the Damort property?

Mr. MYETTE. Yes; I did.

Mr. CONSTANDY. That is kind of a curious situation. We have Mr. Lawton, who up to this point had the firm that was acting as the broker for the sale of the Damort property, and had acted in the capacity of rental agent for the Damort property, and as such received a fee regularly for the collection of rents—he became management agent for the property, and in addition you and Mr. Lawton were conducting the affairs on behalf of Mr. Webb in dealing with Mr. O'Connell. Mr. Lawton was assigned on January 29, 1960, to appraise the Damort property and one other. The other property was adjacent to or across the street from the Damort property and was owned by Mrs. Charpentier.

Did you participate in the appraisal, Mr. Myette?

Mr. MYETTE. No, sir.

Mr. CONSTANDY. Do you know if Mr. Lawton did make an appraisal?

Mr. MYETTE. Not until after it was made.

Mr. CRAMER. You mean he made an appraisal on behalf of the State?

Mr. CONSTANDY. That is correct.

Mr. CRAMER. As the fee appraiser for the State?

Mr. CONSTANDY. That is correct.

In that connection I would like to call the attention of the committee to the certificate of the appraiser, Mr. Lawton, thereafter in connection with the appraisal which he made of the property, attached to his appraisal and submitted to the State. I will read it, Mr. Chairman.

Mr. JONES. Could you state in substance what is contained in the affidavit?

Mr. CONSTANDY. It is actually a certificate.

Mr. JONES. Will you attempt to identify it with this witness?

Mr. CONSTANDY. This witness has no knowledge of it.

Mr. JONES. I see.

Mr. CONSTANDY. Mr. Lawton, having made the appraisal for the State, submitted it to the State and attached to it, as is required in the State, a certificate. The purpose of the certificate is to proclaim to the State that he has no interest in the property. It reads as follows:

I certify that I have examined and appraised the property located in the northwesterly corner of Third Street and Allen Street, South Attleboro, Mass., to determine the fair market value as of July 28, 1959. That I have no interest in said property, neither present nor prospective, nor have I ever had any interest in it. That I have personally examined the said property and that my fee for this appraisal is not contingent on the amount of value reported. By reason of my examination, by virtue of my experience I have been able to form and have formed the opinion that the fair market value of the said property as of the above date was \$60,000.

That is signed by Mr. Lawton and notarized.

Mr. JONES. Does counsel offer that as an exhibit, or as a predicate for some further question of the witness?

Mr. CONSTANDY. I will not at the moment offer it as an exhibit. I will at a later time. But I wanted to establish with Mr. Myette that there was this relationship which existed between Mr. Lawton and the property, and subsequently between Mr. Lawton and the State, as that now relates to the fee paid Mr. Lawton by the State for the making of the appraisal.

Mr. WRIGHT. May I question counsel at that particular point with respect to the extent of the actual interest which Mr. Lawton would have had in this piece of real estate? He was the rental agent at the time?

Mr. CONSTANDY. That is correct.

Mr. WRIGHT. For the Damort property. Is that correct?

Mr. CONSTANDY. That is correct.

Mr. WRIGHT. It was for his firm that our present witness, Mr. Myette, worked. Is that correct?

Mr. MYETTE. Yes, sir.

Mr. CRAMER. They were also agent for the sale, were they not?

Mr. CONSTANDY. Yes. They began as broker on the sale and subsequently secured the rental property, and thereafter they managed it and continued the collection of the rent, taking therefrom the fee payable to them, and even after that became the agent of Mr. Webb in his dealings with Mr. O'Connell.

Mr. CRAMER. And all during this period the witness acted on behalf of the property owner as the agent of Mr. O'Connell.

Mr. CONSTANDY. That is correct.

Mr. WRIGHT. Yet we find later his employer, Mr. Lawton, is working in a dual capacity. He was working still as the owner of the real estate firm which was listing the property, and then as a fee appraiser for the State. Is that correct?

Mr. CONSTANDY. Yes, it is.

Mr. CRAMER. Is this statement under oath by Mr. Lawton?

Mr. CONSTANDY. It is subscribed. The curious thing about that is it is not required to be notarized, although Mr. Lawton thought there was the necessity that it should be notarized, and it is the only one that we came across.

Mr. JONES. Is it an original or a copy?

Mr. CONSTANDY. We have a facsimile copy here.

Mr. JONES. All right.

Mr. CRAMER. So in fact he swore he had no interest in it when in fact he was acting as broker for the owner.

Mr. CONSTANDY. That is correct, and as we have found—

Mr. JONES. Let me say to the members it is rather disconcerting for the witness, and I think we should proceed with the orderly examination of the witness. Those questions you want to propound, if you will save them to the conclusion of the witness' testimony, it will be quite helpful to him and to the procedure of the committee. So, therefore, I respectfully ask, if you would, reserve your questions and I think we could expedite this hearing considerably.

Will you complete the examination of the witness?

Mr. CONSTANDY. Mr. Myette, you did not participate in the appraisal yourself?

Mr. MYETTE. No, sir; I did not.

Mr. CONSTANDY. Your arrangement with Mr. Lawton during the period of your employment was on what basis?

Mr. MYETTE. I received half of the commission on everything I might bring in in regard to a listing, and also if I made a sale.

Mr. CONSTANDY. So whatever properties you would bring to the firm and thereafter earned a profit to the firm, you would participate 50-50 in that profit with the firm?

Mr. MYETTE. Let's put it this way: If I or Mr. Lawton sold that property I would get 50 percent. If someone else in the firm sold it we would split it three ways.

Mr. CONSTANDY. I see. And your arrangement also included other income. As an example, rental income to the Lawton firm. Did you participate in that?

Mr. MYETTE. The same arrangement. Yes, sir.

Mr. CONSTANDY. Did you participate in the fee paid to Mr. Lawton for making this appraisal?

Mr. MYETTE. Yes, I did.

Mr. CONSTANDY. And Mr. Lawton had two properties to appraise and received a fee of \$1,000—\$500 for one property and \$500 for the other. What was your participation in that?

Mr. MYETTE. I got \$250.

Mr. CONSTANDY. You got half of the fee for the transaction of the Damort property?

Mr. MYETTE. That is correct.

Mr. CONSTANDY. At some later time did you learn Mr. Webb had received payment for this property?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. How did you learn that?

Mr. MYETTE. It was in our local newspaper.

Mr. CONSTANDY. What did the paper say, in essence?

Mr. MYETTE. It said that—

Mr. CONSTANDY. Did it give the amount paid for the property?

Mr. MYETTE. Yes, it did.

Mr. CONSTANDY. What was the amount that was given?

Mr. MYETTE. \$60,000.

Mr. CONSTANDY. Did you thereafter have a conversation with Mr. Webb?

Mr. MYETTE. Yes, sir; I did.

Mr. CONSTANDY. What was that?

Mr. MYETTE. Well, I called him and said, "I saw in the paper where you were settled." And he said, "That's right, but I haven't gotten any money yet."

Mr. WRIGHT. Did the witness say \$60,000, Mr. Chairman?

Mr. CONSTANDY. Yes.

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. Did you have a discussion with him about the payment of money to you or to the Lawton firm?

Mr. MYETTE. Yes. I told him I was short and I would appreciate some money when he got a chance to give it to me.

Mr. CONSTANDY. Did you subsequently receive money from him?

Mr. MYETTE. Well, the company received \$1,500; yes, sir.

Mr. CONSTANDY. The company received \$1,500?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. You spoke earlier about a commission.

Mr. MYETTE. Yes.

Mr. CONSTANDY. Maybe that is the wrong term to use in connection with this payment.

Mr. MYETTE. It is my opinion it was wrong in this case; yes, sir.

Mr. CONSTANDY. Your relationship with Mr. Webb began back when you were to be the sales broker for the property.

Mr. MYETTE. That's right.

Mr. CONSTANDY. Your understanding at that time was you were to receive 5 percent of the gross profits from the sale?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Your relationship changed somewhat thereafter as you came to perform a service for him, but a different service than as a sales broker. Is that correct?

Mr. MYETTE. Yes. That's right.

Mr. CONSTANDY. And gradually time passed and you performed service on behalf of Mr. Webb such as contacts, and so forth, with Mr. O'Connell. You were working for Mr. Webb.

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. But this was something different than the actual work in connection with the sale?

Mr. MYETTE. Yes.

Mr. CONSTANDY. The income to be derived in this case was as a result of taking by eminent domain by the State of Massachusetts.

Mr. MYETTE. That's right.

Mr. CONSTANDY. There also developed a feeling on your part you were entitled to receive some payment for this work you had done for him?

Mr. MYETTE. Yes, sir. I felt so.

Mr. CONSTANDY. Was that also a feeling you learned in your discussions with Mr. Lawton that he felt the same way too?

Mr. MYETTE. Yes, sir.

Mr. CONSTANDY. Sometime after November 1959, do you know as to whether Lawton, the firm, or yourself received a letter from Mr. Webb relating to the price he expected to receive for the property?

Mr. MYETTE. I don't recall the letter, sir. There may have been one but I don't recall it.

Mr. CONSTANDY. Do you recall any written communication from Mr. Webb to the firm or to yourself in which he stated he expected to receive himself \$30,000 for the property, but that he also expected that the State would be paying a sum in excess of \$30,000 and he intended to pay a commission only, or a 5-percent fee only against the \$30,000 which he was to receive. Do you recall any correspondence of that type?

Mr. MYETTE. No, sir; I don't.

Mr. CONSTANDY. None?

Mr. MYETTE. I won't say there wasn't any but I don't remember at the moment.

Mr. CONSTANDY. I quote from your earlier conversations.

It was my understanding that he would give us a fee based on the \$30,000 because I think that was all he was going to get. It was agreeable to Lawton that 5 percent of the \$30,000 would be acceptable.

Is that correct, Mr. Myette?

Mr. MYETTE. You are stating now that I said that?

Mr. CONSTANDY. I am stating now that you said that to me. Yes.

Mr. MYETTE. Well, it could be. Yes.

Mr. CONSTANDY. More important, is it a fact? Not whether you said it to me, but whether that was your understanding that you expected to receive something from Mr. Webb, and the basis for it would be on the money he himself would net from the sale to the State.

Mr. MYETTE. Yes. I think that is substantially correct.

MR. CONSTANDY. What is the basis for that understanding? How did you come to the frame of mind where you expected to be paid on that basis?

MR. MYETTE. How did I what?

MR. CONSTANDY. How did you arrive at that conclusion that you would be paid on the basis of what Mr. Webb received from the State? Not what the State paid for the property? We will go back to that in a minute, Mr. Myette.

MR. MYETTE. Yes.

MR. CONSTANDY. Subsequently the firm did receive a check did it not from Mr. Webb in the sum of \$1,500?

MR. MYETTE. That's right.

MR. CONSTANDY. Thereafter did you have a conversation on the telephone after that payment with Mr. Webb, pertaining to certain records?

MR. MYETTE. Yes, sir.

MR. CONSTANDY. Will you relate to the committee what that conversation was?

MR. MYETTE. Well, Walter called me and asked me if the FBI had been in to see me and I said, no, they had not. He said, "They had been in to see me." And I said, "What about?" And he said, "In respect to the sale of property."

MR. CONSTANDY. What is the rest of the conversation?

MR. MYETTE. Well, that was about it. They wanted to know something about the sale of property.

MR. CONSTANDY. Further than that, wasn't it agreed you would go to Boston with Mr. Lawton and visit with Mr. Webb?

MR. MYETTE. Not at that moment. I talked with Mr. Lawton afterward.

MR. CONSTANDY. After this first conversation then you again spoke with Mr. Lawton?

MR. MYETTE. Yes.

MR. CONSTANDY. What was that conversation?

MR. MYETTE. I told him what Mr. Webb had said, that the FBI had been in to question him about the property.

MR. CONSTANDY. What did Mr. Lawton say?

MR. MYETTE. He said what do they want to know? And I said I don't know and he said, "Don't you think we ought to talk with Mr. Walter Webb?" And I said, "I thought it might be a good idea."

MR. CONSTANDY. He suggested you talk to Walter Webb?

MR. MYETTE. That's right.

MR. CONSTANDY. And you concurred in the idea?

MR. MYETTE. Yes.

MR. CONSTANDY. Then what did you do?

MR. MYETTE. I called Walter and asked if we could come up and see him.

MR. CONSTANDY. Did you?

MR. MYETTE. Yes, I did.

MR. CONSTANDY. And you got to see Mr. Webb?

MR. MYETTE. That's right.

MR. CONSTANDY. You drove to Boston?

MR. MYETTE. What was that?

MR. CONSTANDY. You and Mr. Lawton drove to Boston?

MR. MYETTE. That's right.

MR. CONSTANDY. What took place at that time?

MR. MYETTE. I went up to Mr. Webb's office, and as it was brought to mind now—and I couldn't remember at the time—I didn't do it, but we brought up our file correspondence and Mr. Webb brought out his.

MR. CONSTANDY. You brought up your file with the correspondence, to Mr. Webb's office?

MR. MYETTE. That's right.

MR. CONSTANDY. And Mr. Webb took out his correspondence file?

MR. MYETTE. That's right.

MR. CONSTANDY. Then what happened?

MR. MYETTE. Then the papers were passed back and forth, and it was decided that this would be taken out, and that would be taken out, and they were destroyed.

MR. CONSTANDY. They were destroyed? Was there a conversation prior to that? Did you have a general discussion before you sat down with the files and began to go through them?

MR. MYETTE. Well, I suppose it was a conversation. I don't recall what it was. But the gist of the thing was—

MR. CONSTANDY. If I may refresh your recollection.

MR. MYETTE. Go ahead.

MR. CONSTANDY. From the statement you made to us at the time when you were perhaps under less of a strain. You said, "We discussed the investigation regarding the deal. It was decided, not having benefited, we had better tell the truth." Is that correct?

MR. MYETTE. Yes. I think that is probably true.

MR. CONSTANDY. And Mr. Webb got out his file?

MR. MYETTE. Yes.

MR. CONSTANDY. What took place then?

MR. MYETTE. As I say, the papers were passed between Mr. Webb and Mr. Lawton.

MR. CONSTANDY. Between Mr. Webb and Mr. Lawton?

MR. MYETTE. That's right.

MR. CONSTANDY. And as each paper would be passed from one to the other, what was the conversation?

MR. MYETTE. "I think that ought to be taken out." "No need to have that in there," and so on and so forth. And that's the way.

MR. CONSTANDY. Was there any comment as to why it should be taken out?

MR. MYETTE. No; I don't think so. Any particular comment. They were read, but not by each other. Not between, or not openly.

MR. CONSTANDY. These letters being passed back and forth, did they not represent correspondence that Mr. Webb had directed to your firm, and Mr. Lawton and yourself, and answers to those letters, or letters which initiated from your firm and Mr. Lawton to him?

MR. MYETTE. I think that is right.

MR. CONSTANDY. So with a particular letter the sender would have the original; isn't that correct? Or, rather, the carbon?

MR. MYETTE. Yes.

MR. CONSTANDY. And the recipient would have the originals.

MR. MYETTE. Yes.

MR. CONSTANDY. Was the original compared with the carbon?

Mr. MYETTE. Now you are asking me something I honestly cannot truthfully tell you. I don't know what was the contents of those letters. Who had what, I don't know. I really don't know.

Mr. CONSTANDY. The letters were matched up, were they?

Mr. MYETTE. Yes. Oh, I presume that part of it. I didn't understand you.

Mr. CONSTANDY. If it was decided that the letter had best be destroyed, both the original and carbon copy were destroyed; were they not?

Mr. MYETTE. Yes.

Mr. CONSTANDY. How were they destroyed?

Mr. MYETTE. They were torn up and put in the wastepaper basket.

Mr. CONSTANDY. Who brought up the file from your office to Boston? You or Mr. Lawton?

Mr. MYETTE. I don't remember but we both went together and it was with us. I don't remember whether he carried it or I carried it altogether, sir.

Mr. CONSTANDY. Besides that, who had the thought to take it?

Mr. MYETTE. I think it might have been both of us.

Mr. CONSTANDY. Together?

Mr. MYETTE. Together.

Mr. CONSTANDY. You both had the thought together, and expressed it together, to take the file to Boston?

Mr. MYETTE. I think the idea of our going up there at all was to compare notes, to be frank with you.

Mr. CONSTANDY. And see what evidence existed in correspondence?

Mr. MYETTE. That's right.

Mr. CONSTANDY. You say now that you have no recollection of what was contained in those letters?

Mr. MYETTE. I couldn't tell you. I don't know.

Mr. CONSTANDY. Can I quote from our conversation and see if I can refresh your recollection?

Mr. MYETTE. Go ahead.

Mr. CONSTANDY. (reading):

In essence the letters removed related to the difference in price what he, Webb, was getting and what the State was paying. The letters from Webb regarding his not paying more than 5 percent of \$30,000 was one.

We will have more testimony later, perhaps more directly, since it pertains to Mr. Webb, that there was such a letter sent to your firm in which he stated that he expected to receive a net to himself of \$30,000. His purpose in writing that letter was to make it clear with you and Mr. Lawton that he did not intend to pay a fee on anything above the \$30,000 which he was to receive. If he were to get more than \$30,000, he would still pay you only a fee on \$30,000. Was there such correspondence, Mr. Myette?

Mr. MYETTE. There might very well have been.

Mr. CONSTANDY. Wasn't that really the purpose of having gotten together up there?

Mr. MYETTE. The purpose of going up there was, as I say, frankly and honestly telling you, we went up there to compare notes. Over a period of time we wanted to find out what was in the file, and I couldn't tell you what was in the file.

Mr. CONSTANDY. In December 1960 did you receive a telephone call from Mr. Harney?

Mr. MYETTE. Yes, sir; I did.

Mr. CONSTANDY. When was that call in relation to your appearance before the grand jury at the U.S. district court in Boston?

Mr. MYETTE. That was one of the few things that was well fixed in my mind. I think it was 3 days before I was called before the grand jury.

Mr. CONSTANDY. Where were you when you received the telephone call from Mr. Harney?

Mr. MYETTE. At my home.

Mr. CONSTANDY. What did Mr. Harney say?

Mr. MYETTE. He said, "I went to South Africa. Can I see you?" I said, "Yes. Sure." And he said, "Where do you live?" And I told him. He asked, "How do I get there?" And I gave him directions. And sometime afterward he arrived at my house.

Mr. CONSTANDY. Did you have a conversation with him at that time?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Was he alone?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Were you alone?

Mr. MYETTE. Yes.

Mr. CONSTANDY. What was the conversation?

Mr. MYETTE. When he came in he said—we passed the time of day and he said, "It's all right to say that you know or you knew Mr. O'Connell."

Mr. CONSTANDY. Could you explain that?

Mr. MYETTE. Did he explain it?

Mr. CONSTANDY. No. Could you.

Mr. MYETTE. No; I couldn't. It was not brought to my mind. I thought it peculiar until Mr. May said to me in the office, after the questioning, he thought that maybe Mr. Harney wanted to have it appear that I knew Mr. O'Connell before he introduced him to me, but that I hadn't made any such effort at that time.

Mr. CONSTANDY. Will you say again what it was he said to you?

Mr. MYETTE. He said, "It would be all right if you say that you knew Mr. O'Connell."

Mr. CONSTANDY. That is what Mr. Harney said to you?

Mr. MYETTE. That's right.

Mr. CONSTANDY. What did you interpret that to mean at the time he said it?

Mr. MYETTE. To be frank I couldn't get any answer out of him at all. That's all he said.

Mr. CONSTANDY. He was apparently trying to tell you something.

Mr. MYETTE. That's right. And I was a little too stupid to understand it.

Mr. CONSTANDY. It was lost on you?

Mr. MYETTE. Yes; it was lost on me.

Mr. CONSTANDY. Was there any additional conversation?

Mr. MYETTE. No; that was all.

Mr. CONSTANDY. The whole time?

Mr. MYETTE. Yes.

Mr. CONSTANDY. And then he left?

Mr. MYETTE. Yes.

Mr. CONSTANDY. Did you see him thereafter?

Mr. MYETTE. No, sir.

Mr. CRAMER. May I ask a question? Was it also lost on you as to why it was necessary to destroy these papers?

Mr. MYETTE. I don't know. I don't know what you mean by that.

Mr. JONES. We will get into all of that. If you will withhold it then we will save the questions until after counsel has completed and it will be helpful to everybody on the committee.

Mr. CRAMER. Of course——

Mr. JONES. How much questioning do you have?

Mr. CRAMER. I have just the one question. I haven't had an opportunity to see these documents and to be informed on what the witness is expected to come up with and therefore as we go along, in order to understand it, it is necessary occasionally to ask a question. I try to keep my questions to the minimum and I would like to have the witness answer the question.

Mr. JONES. Then let counsel consider if there is any need for examination of any document. The Chair will indulge any member to make a total and complete examination of any matter of documentary evidence, or other type of evidence. But this way of going about the examination of the witness is not very satisfactory to the Chair.

Mr. SCHERER. But sometimes when a witness, Mr. Chairman, answers the question and counsel does not follow up with what we think is a proper question, the whole point is missed.

Mr. JONES. You can save those points to where you have full and complete time.

Mr. SCHERER. But I am trying to point out that afterward you can't make the points.

Mr. JONES. Of course I will say this: If members direct their questions to counsel during an examination it is perfectly proper in the opinion of the Chair. Let's go ahead and conclude with the witness.

Mr. SCHERER. Is it the ruling of the Chair we can't ask any questions?

Mr. JONES. The Chair will entertain any question propounded to the Chair.

Mr. CRAMER. Will the Chair recognize the question I just propounded to the witness?

Mr. JONES. There were several questions.

Mr. SCHERER. Some of us have been sitting here all morning, listening to these witnesses, and I don't think we should be precluded from asking questions. They talk about muzzling at the Pentagon.

Mr. CRAMER. I would like to know whether or not it is proper for him to answer the question.

Mr. JONES. The Chair muzzles himself so he abstains from asking those questions at times, and I don't see why others can't too. As I said we will have full and complete opportunity to examine the witness and the Chair will state if it is necessary for you to examine any document or evidence you can have that opportunity, but for the sake of orderly procedure we are going to have to have some judicious approach to this.

Mr. SCHERER. We are on schedule with these witnesses.

Mr. JONES. Counsel will continue with the examination of the witness.

Mr. CONSTANDY. I would like to put in evidence the letter referred to of November 19, 1957, from Mr. Thomas Goggin to Mr. Felix Myette, and Mr. Myette's answer thereto dated November 21, 1957, and a letter from Mr. Walter Webb dated December 16, 1957, to the Rhode Island Trust Co. which contains the note to Mr. Myette making reference to the document with a selling price of \$20,000. I ask it be made exhibit 6-A, B, and C.

Mr. JONES. Is the witness familiar with the document?

Mr. CONSTANDY. Yes, he is.

Mr. JONES. Will you identify those documents, please, that are going in the record? Without objection, the witness has identified the several documents presented to the committee and they will be identified as exhibit 6-A, B, and C.

(The documents referred to were marked for identification and received as exhibits 6-A, B, and C, and are retained in subcommittee files.)

Mr. JONES. Let us hasten along.

Mr. CONSTANDY. I have no further questions.

Mr. JONES. Now, Mr. Cramer.

Mr. CRAMER. May I see those documents, Mr. Chairman? May I look at them now?

Mr. WRIGHT. Mr. Chairman, may I ask some questions of the witness while Mr. Cramer looks at the documents?

Mr. BALDWIN. I would like to ask if we can have a ruling that applies to all or none.

Mr. JONES. I can't rule for any other chairman. All I am trying to do is rule on things as we go along.

Mr. BALDWIN. I want to make it clear up to now there has never been a case where the Chair stopped the questioning of any member on that side, on the other side. If the Chair is going to rule questions on this side are out, then the ruling should be applicable to all.

Mr. JONES. I didn't know I made any distinction between this side and that side.

Mr. BALDWIN. I am just bringing it up as a point of fact. In the day and a half of this hearing there has not been a case of anybody who stopped any questioning on that side of the center of the aisle.

Mr. JONES. Of course I have not been presiding at any other time, and the only thing I can rule on is those things that occur at the time when I occupy the chair.

Mr. BALDWIN. It does not make any difference. It is the fact.

Mr. JONES. Let me say this, Mr. Baldwin: I am not trying to halt anybody in their examination of the witness. I think the witness is here and has come a long distance. He is not a man that is knowledgeable of the law and certainly I think he should be given consideration in letting him present what he knows in a narrative way as best he can possibly. I think it is very vexing to have four or five people presenting questions to him at the same time. At the same time I do not think the Chair ever entertained any notion that he was foreclosing the right of any member to make any examination they would like to make of this witness. As I said, I didn't mean it to apply to this side of the aisle or that side of the aisle, but it is just a question of orderly procedure. I don't say I am making any arbi-

trary rule. The only rules I am enforcing are ones that the present occupant of the Chair would enforce, or plead is the best procedural method for this type of hearing.

Mr. WRIGHT. Mr. Chairman, may I be recognized?

Mr. JONES. If the gentleman from Florida will yield.

Mr. CRAMER. I have a couple of questions and I will be very brief. If the Chair will indulge me I will ask him a couple of questions and then the majority can have him back. Just a couple of questions.

Mr. JONES. You can ask him questions here until 12 o'clock at night pertaining to what he testified to or any other statements.

Mr. CRAMER. I would like to ask if you will answer the question I asked you previously.

Mr. MYETTE. What was the question?

Mr. CRAMER. Will the court reporter then go back and find the question?

Mr. WRIGHT. I believe I could quote your question.

Mr. CRAMER. I will phrase another question then, of necessity, because the reporter cannot find the question I posed previously.

Mr. WRIGHT. I believe I can quote your question.

Mr. CRAMER. Can you quote it verbatim?

Mr. WRIGHT. I believe very nearly so. The gentleman from Florida had just posed a question to the witness subsequent to the witness' answer that some comment relating to its being all right to say he knew O'Connell was lost on him. Then the gentleman from Florida asked the witness whether or not the necessity for destroying the documents was also lost on him.

Mr. CRAMER. I think that is a very good paraphrase of my question and I thank the gentleman from Texas, and I, through the gentleman from Texas, would like to ask that question. Will the witness please answer the question?

Mr. MYETTE. What do you mean by being lost on me?

Mr. CRAMER. You are the one who used the phraseology that this was being lost on you. Counsel asked you the question why was it lost on you as to the connection that O'Connell had with this thing.

Mr. MYETTE. I didn't grasp what Mr. Harney was apparently trying to tell me. In what respect do you want me—

Mr. CRAMER. Do you understand my question?

Mr. MYETTE. Your question?

Mr. CRAMER. Yes.

Mr. MYETTE. No; I don't think I do.

Mr. CRAMER. Well, I don't blame you, taken out of the context within which you testified to it. I will ask it another way then. Didn't you smell something fishy, or you certainly realized something was wrong and exhibited it by participating in the tearing-up ceremonies, did you not?

Mr. MYETTE. That's right.

Mr. CRAMER. So what did you think was wrong at that time?

Mr. MYETTE. I thought possibly—I didn't understand they tore up any document—

Mr. CRAMER. You participated in it.

Mr. MYETTE. I was there.

Mr. CRAMER. As a matter of fact you and Mr. Lawton discussed it beforehand and decided to take your files and original notes and go down there.

Mr. MYETTE. That's right.

Mr. CRAMER. And participated in the meeting, at which time certain documents were torn up.

Mr. MYETTE. That's right.

Mr. CRAMER. Why was that done?

Mr. MYETTE. I think primarily it was to probably—this was, of course, after the payment and all. I think it was probably having something to do with the establishment of values. More maybe with the appraisal than anything else.

Mr. CRAMER. So why were you tearing them up? Who were you hiding them from? Who were you tearing them up to keep them from?

Mr. MYETTE. I didn't tear any.

Mr. CRAMER. Why did someone in your presence at the meeting tear them up?

Mr. MYETTE. I think in their judgment it would be probably prejudicing someone, or anyone that might look at them.

Mr. CRAMER. Prejudice someone?

Mr. MYETTE. Yes.

Mr. CRAMER. Didn't they speak the truth? Didn't the letters state the facts? Weren't they true correspondence between Mr. Lawton and Mr. Webb?

Mr. MYETTE. I don't know what was in the letters.

Mr. CRAMER. You saw the letters?

Mr. MYETTE. Only—

Mr. CRAMER. That's right.

Mr. MYETTE. That's right.

Mr. CRAMER. It was sufficiently hot so that it had to be destroyed before that got into someone's hands. Is that right?

Mr. MYETTE. In someone's judgment.

Mr. CRAMER. In your judgment?

Mr. MYETTE. No.

Mr. CRAMER. You are the one who, with Mr. Lawton, decided you should go to Mr. Webb to see Mr. Webb to compare files.

Mr. MYETTE. That's right.

Mr. CRAMER. And you participated in the meeting where the decision was made to destroy certain files.

Mr. MYETTE. I was there. Yes, sir.

Mr. CRAMER. Did Mr. Harney suggest to you what service he could render in this whole setup—in this whole deal? Did he suggest what services he could render?

Mr. MYETTE. Not specifically. No. All he said was he told me to get in touch with Mr. O'Connell.

Mr. CRAMER. He what?

Mr. MYETTE. He asked me to get in touch with Mr. O'Connell at the very beginning, as I have already said.

Mr. CRAMER. He didn't suggest any services he could render—Mr. Harney or Mr. O'Connell?

Mr. MYETTE. Oh, yes.

Mr. CRAMER. What?

Mr. MYETTE. He said he thought Mr. O'Connell, through his connections in Boston, would be able to get Mr. Webb a quick and good settlement on his property.

Mr. CRAMER. Because of his connections?

Mr. MYETTE. That's right. Yes, sir.

Mr. CRAMER. Did either Mr. Harney or Mr. O'Connell in your discussions with either of them say what those connections were?

Mr. MYETTE. Well, Mr. Harney suggested that Mr. O'Connell would be good because he had a brother who was a secretary to the Governor, or in the Governor's office, and therefore he knew his way around.

Mr. CRAMER. Who said that?

Mr. MYETTE. Mr. Harney said that.

Mr. CRAMER. Mr. Harney said it about Mr. O'Connell?

Mr. MYETTE. That's right.

Mr. CRAMER. Did Mr. O'Connell suggest when you visited with him that he could get a substantial price for this property if he were employed?

Mr. MYETTE. No price was mentioned but he said he could do a good job.

Mr. CRAMER. How did you understand he was going to exercise this influence that he was supposed to have through his brother?

Mr. MYETTE. Well, I presumed or assumed it would be political influence, but I have no knowledge of that.

Mr. CRAMER. And knowing of the fact that the political influence was going to be used, so far as you in your own knowledge understood it was going to be used, you went ahead and made arrangements for Mr. O'Connell to represent Mr. Webb?

Mr. MYETTE. No. Wait a minute. I didn't make arrangements with Mr. Webb or Mr. O'Connell to work for Mr. Webb.

Mr. CRAMER. But you discussed it then?

Mr. MYETTE. I discussed it, yes.

Mr. CRAMER. You didn't sign the agreement?

Mr. MYETTE. I didn't make any agreement.

Mr. CRAMER. And you didn't at any time during all of these negotiations, during this long period of time, come to the conclusion in your own mind that something smelled here and something was wrong until somebody came and questioned you about it?

Mr. MYETTE. Let me explain that just this way. After Mr. O'Connell had worked on the thing for quite some time, as I told you, Mr. Webb was anxious to get the thing settled, and then I made a trip to Boston to see Mr. O'Connell and get whatever information he could give me, which was not very much. Then I reported back to Mr. Webb what had happened.

Mr. CRAMER. You didn't smell anything fishy during all this period, even though you understood Mr. O'Connell could use political influence?

Mr. MYETTE. Let me, if I may, finish it this way. Up to that point there had been nothing tangible with regard to negotiations, or an agreement.

Mr. CRAMER. When did you get something tangible?

Mr. MYETTE. I didn't. I was going to tell you that. After I called Walter Webb and told him what I had done in Boston, a little while after that he called me and said, "How are you making out?" I said, "I haven't heard anything from you." And he said, "No." He said, "I have a friend up here that thinks I ought to get another lawyer." And I said, "Well, maybe you should." I said, "I don't know anything

about Mr. O'Connell." I said, "I can't get anything out of him. I called him a number of times and I can't get a reply from him." He said, "He's only over a few streets from me. Why don't I go over and talk with him." I said, "It would be a good idea. Why don't you." And from that time on we were not in the picture whatsoever.

Mr. CRAMER. What was your understanding? What kind of political influence did O'Connell have? What was your understanding about it?

Mr. MYETTE. I have no idea except his brother, as I understood it, and I don't recall whether he was or not, was secretary to the Governor.

Mr. CRAMER. Who was going to exert influence within the department of public works?

Mr. MYETTE. I have no idea. I have no idea.

Mr. CRAMER. But you knew Mr. Harney was employed with the department of public works, didn't you?

Mr. MYETTE. Yes, I did.

Mr. CRAMER. You knew that?

Mr. MYETTE. Sure.

Mr. CRAMER. And then the result of this whole thing was that you started out willing to sell the property for \$21,500, and it ended up being sold to the State after negotiation for \$60,000. Is that right?

Mr. MYETTE. That's right.

Mr. CRAMER. Three times what you had indicated a willingness to sell the property for, or three times what Mr. Webb had indicated a willingness to sell the property for. You were willing to sell it to someone in his behalf for \$21,500 and it was sold to the State for \$60,000.

Mr. MYETTE. Yes, sir.

Mr. CRAMER. Does the staff have the information concerning appraisals, and so forth, on this property?

Mr. CONSTANDY. We intend to get into that in considerable detail, Mr. Cramer.

Mr. CRAMER. Then this pretty well evidences what service Mr. O'Connell was able to render and what it amounted to in end results. Three hundred percent of what Mr. Webb himself acknowledged as the fair value for the property, and he couldn't sell it at that.

Mr. MYETTE. That was the way it turned out, but I wanted to make the point clear at the time Mr. Webb contacted Mr. O'Connell personally, which would be probably the first time he met him, from that time on Mr. Lawton and I were not in the picture.

Mr. CRAMER. And, of course, during this period your associate in Lawton & Son was also working as fee appraiser employed by the department of public works?

Mr. MYETTE. Mr. Lawton was.

Mr. CRAMER. Yes, and you were sharing in those profits as well.

Mr. MYETTE. I didn't know it at the time.

Mr. WRIGHT. Mr. Chairman.

Mr. JONES. Any further questions, Mr. Cramer?

Mr. CRAMER. That is all I have, Mr. Chairman.

Mr. JONES. Mr. Kluczynski.

Mr. KLUCZYNSKI. No questions.

Mr. JONES. Mr. Wright.

Mr. WRIGHT. Mr. Myette, it was in 1957 you first heard that the Damort Realty Co. property was for sale?

Mr. MYETTE. Just a second. I didn't get all of that.

Mr. WRIGHT. It was in 1957 that you first heard this property was for sale and approached Mr. Webb, one of the owners? Is that correct?

Mr. MYETTE. No. It was the Saxonville Lumber Co. at that time. They were the owners at that time.

Mr. WRIGHT. Subsequent to that time Mr. Webb became the owner?

Mr. MYETTE. That's right.

Mr. CONSTANDY. Can I clarify that point? The property through this period was owned by the Damort Land Co. Mr. Webb was the principal in the Damort Land Co. which was a realty holding company for an operation he owned called Saxonville Lumber Co. In other words, Saxonville is the operating company and title was held by Damort Land Co., and Mr. Webb was an officer and had an interest in both firms. Saxonville was bought out by the Damort Co. and he became the entire thing.

Mr. WRIGHT. Thank you. It was in 1957 you first made a contact with the owners of the property in an attempt to represent them for its sale?

Mr. MYETTE. Right.

Mr. WRIGHT. At that time you agreed with them to sell the property on the basis that if you sold it you would get the usual 5 percent commission?

Mr. MYETTE. That's right.

Mr. WRIGHT. Following that, you suggested to them that the property be rented?

Mr. MYETTE. Yes.

Mr. WRIGHT. And you did consummate a rental transaction?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. One of the reasons you suggested it should be rented rather than sold, I believe you said, was because you had heard the State was about to take it over for use in highways, and that you believed the State would be a better purchaser than an individual.

Mr. MYETTE. It didn't happen exactly that way. I rented the property to an observer.

Mr. WRIGHT. I see. Your advice to the owners was that it would be well to have someone occupying the property and keeping it in good condition?

Mr. MYETTE. That's right.

Mr. WRIGHT. Pending such time as it might be sold either to the State or some other person?

Mr. MYETTE. That is right.

Mr. WRIGHT. This was in 1957?

Mr. MYETTE. It was at the beginning—it might have been 1958. I don't remember the exact date.

Mr. WRIGHT. Following that, someone offered \$15,000 for the property and you didn't even report the offer to them?

Mr. MYETTE. That's right.

Mr. WRIGHT. You discussed the matter with Mr. Webb, who indicated in his opinion it was worth \$23,000?

Mr. MYETTE. I didn't submit the offer to Mr. Webb.

Mr. WRIGHT. You didn't submit the \$15,000 offer?

Mr. MYETTE. No.

Mr. WRIGHT. But you did have the feeling Mr. Webb wanted \$23,000 for the property?

Mr. MYETTE. Yes, I did.

Mr. WRIGHT. In fact, you received a memorandum from him suggesting you might get a quick sale on it by dropping it a little below that?

Mr. MYETTE. Yes.

Mr. WRIGHT. \$20,000 to \$21,000, or something like that?

Mr. MYETTE. Yes.

Mr. WRIGHT. Eventually Harney contacted you, and after some discussion the contact with O'Connell was made?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. Now, you did not know, following that, of the sale of the property until you read it in the newspaper. Is that correct?

Mr. MYETTE. I didn't find out the negotiations were completed until I read it in the newspapers. That's right.

Mr. WRIGHT. About what date was that?

Mr. MYETTE. I couldn't tell you exactly, but it was put up not too long ago. I have a copy of it. I think April 1, 1960.

Mr. WRIGHT. April 1, 1960?

Mr. MYETTE. Yes.

Mr. WRIGHT. So this had gone on for 2½ to 3 years?

Mr. MYETTE. That's right.

Mr. WRIGHT. When finally you discovered it had been sold for \$60,000, were you surprised at that price the State paid for it?

Mr. MYETTE. My first knowledge of it, yes.

Mr. WRIGHT. And it did surprise you that it brought that much?

Mr. MYETTE. Well, I had no reason to know what negotiations were going on, because I didn't participate in them at all and didn't know anything about it.

Mr. WRIGHT. But you had been trying to sell it for \$20,000?

Mr. MYETTE. Oh, yes. Sure.

Mr. WRIGHT. That's it. And the figure reported in the newspaper was \$60,000?

Mr. MYETTE. I believe so. Yes, sir.

Mr. WRIGHT. You understood from Mr. Webb that he was receiving only \$30,000 of that amount. Is that right?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. From what you were able to observe of the amount of effort and time that went into it on the part of the attorney, his effort would not be worth \$30,000, would it?

Mr. MYETTE. Of course, I don't know how you make an adjustment on attorney's fees, because I don't know.

Mr. WRIGHT. You made some comment a little earlier about not being able to get him on the phone when you wanted to.

Mr. MYETTE. Oh, yes.

Mr. WRIGHT. Then as far as you knew, he had not done much work on it?

Mr. MYETTE. As far as I could find out from him, no.

Mr. WRIGHT. So it is clear that the owner of the property, Mr. Webb received only \$30,000 or one-half of the total amount the State paid?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. Of your personal knowledge, can you say where the other half went?

Mr. MYETTE. No, sir; I have no idea.

Mr. WRIGHT. But you do know that you received your 5-percent commission only on the \$30,000 that Mr. Webb got?

Mr. MYETTE. Well, you call it a commission. I say it was a fee. And I got—we got the \$1,500. I am not denying that.

Mr. WRIGHT. And the \$1,500 represents a 5-percent fee——

Mr. MYETTE. That is correct.

Mr. WRIGHT. Of the \$30,000 which the owner of the property received?

Mr. MYETTE. That's right.

Mr. WRIGHT. So we have lost \$30,000 here somewhere.

Mr. MYETTE. That's right.

Mr. WRIGHT. So someone presumably has that \$30,000?

Mr. MYETTE. I wouldn't know.

Mr. WRIGHT. Now, I want to question you just a little bit more about the matter of influence which O'Connell was represented to possess.

I think you stated that Mr. Harney represented O'Connell as a man of influence?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. And in representing him thusly he said, among other things, "he has a brother who works for the Governor"?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. At no time, I gather from your testimony, was there any indication that the brother was contacted?

Mr. MYETTE. No, sir.

Mr. WRIGHT. I might ask the counsel, if in the procedure followed by the Department of Public Works of Massachusetts a brother, working in the Governor's office, would have any influence on the assignment of the appraisers?

Appraisers are assigned not by the Governor's office, I presume, but by someone in——

Mr. MAY. We have had testimony before of the procedure, that the appraisers are selected by the associate commissioner of the department of public works.

Mr. WRIGHT. And in this case that was a man named Mr. Dole?

Mr. MAY. Mr. Fred Dole.

Mr. WRIGHT. And he is one of those who has been indicted as of——

Mr. MAY. Yes, sir.

Mr. WRIGHT (continuing). Yesterday?

Mr. MAY. Yes, sir.

Mr. WRIGHT. So that actually, what Mr. Harney is trying to do is to convince these landowners that Mr. O'Connell has influence and is a man capable of getting things done?

Mr. MYETTE. Yes, sir.

Mr. WRIGHT. So far as I have been able to see, there hasn't been any evidence to indicate that Mr. O'Connell actually possessed any particular influence.

Mr. MYETTE. That——

Mr. WRIGHT. Someone did, obviously.

But, so far as I have been able to see, there is no evidence indicating that Mr. O'Connell had——

Mr. MYETTE. I have no such evidence.

Mr. WRIGHT. So it is not possible that Mr. Harney simply is trying to sell the services of Mr. O'Connell, not because of any influence Mr. O'Connell may possess, but because of a possible willingness on the part of Mr. O'Connell to share certain benefits with Mr. Harney?

Mr. MYETTE. I couldn't make a judgment on that. I don't know.

Mr. WRIGHT. If this were true, it would make the question of whether or not he had a brother working for the Governor meaningless except as a selling point for Mr. Harney, to convince prospective clients that Mr. O'Connell was a man of great and vast influence. Does that make sense?

Mr. MYETTE. Yes, that is possible.

Mr. WRIGHT. We have lost \$30,000, Mr. Chairman.

Mr. CRAMER. I am sure counsel can tell us where it went, if you give him a chance.

Mr. WRIGHT. I think that is all.

Mr. JONES. Mr. Baldwin.

Mr. BALDWIN. No questions.

Mr. JONES. Mr. Edmondson.

Mr. EDMONDSON. No questions.

Mr. JONES. Mr. Robison?

Mr. EDMONDSON. Is it possible, when you call on me, to yield to our counsel and let him ask questions?

Mr. JONES. Any questions from counsel—

Mr. CONSTANDY. Mr. Myette, at the time your firm received a payment from Mr. Webb of \$1,500 did you participate in that?

Mr. MYETTE. In the \$1,500?

Mr. CONSTANDY. Yes.

Mr. MYETTE. Yes, I got \$750.

Mr. CONSTANDY. You got half?

Mr. MYETTE. Yes.

Mr. CONSTANDY. That is consistent with the arrangement?

Mr. MYETTE. Yes. Yes, sir.

Mr. CONSTANDY. Nothing further.

Mr. JONES. Mr. Myette, the committee is very appreciative to you for your appearance before the committee.

Mr. MYETTE. Thank you and the committee for your courtesy, sir.

Mr. JONES. Mr. Walter M. Webb.

Are you Mr. Webb?

Mr. WEBB. I am, sir.

Mr. JONES. Do you solemnly swear that the testimony that you will give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WEBB. I do.

TESTIMONY OF WALTER M. WEBB, LYNNFIELD, MASS.

Mr. JONES. Mr. Webb, will you identify yourself for the purpose of the record, please?

Mr. WEBB. I am Walter M. Webb, Lynnfield, Mass.

Mr. JONES. Where do you reside in Lynnfield?

Mr. WEBB. 55 Howard Avenue, Lynnfield, Mass.

Mr. MAY. Mr. Chairman, may I interrupt at this point to discuss another matter?

Mr. JONES. Mr. May.

Yesterday we had testimony from a man named Adrian A. Beaulieu, and he gave testimony showing that he had been approached by Mr. Frank Harney, or Orlando Q. Spagnoletti, at which time they told him that they could get him more money than he had been offered by the State if he would share with him 50 percent of all the money above the State's offer.

At that time Mr. Beaulieu mentioned that, subsequent to that, the approach by Mr. Harney and Mr. Spagnoletti, that he had talked with his friend, Arthur Wilcox, who was at that time chairman of the board.

Mr. Wilcox had told Mr. Beaulieu to have nothing to do with those gentlemen, go to Commissioner Dole with this matter and tell Mr. Dole about the approach, and deal only directly with Mr. Dole.

We did not know yesterday, except only second-hand from Mr. Beaulieu, what took place when Mr. Munroe went to see Mr. Dole.

The staff found, after discussing the matter with Mr. Munroe, that he had told Commissioner Dole about this affair. The staff talked the matter over with Commissioner Dole and he could not recall the situation.

Today we were able to get an affidavit from Mr. Munroe and we have it here.

Mr. James P. Kelly, of our staff, has done his usual fine work. I would like to read this affidavit of Mr. Munroe into the record at this point, Mr. Chairman.

Mr. JONES. All right.

Mr. MAY (reading):

Lawrence Munroe, being duly sworn, deposes and says:

I reside at 12 King Street, Auburndale, Mass.

I am making this affidavit willingly and voluntarily at the request of James P. Kelly, who has identified himself to me to be an investigator with the Special Subcommittee on the Federal-aid Highway Program of the Committee on Public Works of the U.S. House of Representatives, Washington, D.C. This affidavit will supplement my sworn statement of January 31, 1962, to the committee.

In or about the summer of 1957 I had a conversation with my associate, Adrian A. Beaulieu, regarding the visit to our office at 82 Crescent Avenue, Boston, by two men who discussed a land-damage case with Mr. Beaulieu. Shortly after I had this conversation with Mr. Beaulieu, I went to see Associate Commissioner Fred B. Dole, of the Commonwealth department of public works, at his office, 100 Nashua Street, Boston. I told Commissioner Dole that a couple of men had approached my partner, Mr. Beaulieu, regarding our land-damage case.

I told the commissioner that the two men mentioned a figure lower than an appraisal figure of \$12,775, which a Mr. Blunt, a local appraiser, had given us on our property. I told Commissioner Dole that the two men had mentioned getting us more money "for a consideration," that is, if we split a certain amount of money with them.

I did not feel that this was a proper or authorized approach to us by the Commonwealth of Massachusetts and mentioned this fact to Commissioner Dole. I did not mention Mr. Spagnoletti or Mr. Harney by name to Commissioner Dole and the commissioner expressed no interest one way or another when I related this story to him.

Commissioner Dole expressed the belief that the \$12,775 figure given to us by Mr. Blunt seemed a reasonable one. Commissioner Dole said it was not necessary for us to deal with anyone else on this case, that he would handle it for us himself.

LAWRENCE MUNROE.

Subscribed and sworn to before me this 6th day of February 1962.

GEORGE V. MEDEUOR.

Will you make that exhibit No. 7?

Mr. JONES. Without objection it will be in the record as exhibit 7. (The document referred to was marked "Exhibit No. 7," and will be found in the files of the committee.)

Mr. MAY. Pardon me. Mr. Webb, what is your business today?

Mr. WEBB. I am in the wholesale lumber business.

Mr. MAY. What is the name of that business?

Mr. WEBB. Warren Trask Co.

Mr. MAY. And where is that located?

Mr. WEBB. 73 Cornhill, Boston.

Mr. MAY. 73 Cornhill Street, in Boston?

Mr. WEBB. Cornhill.

Mr. MAY. Mr. Webb, at one time you were a partner in a lumber business known as the Saxonville Wholesale Lumber Warehouse Co.?

Mr. WEBB. Yes.

Mr. MAY. That did business in Saxonville, Mass.?

Mr. WEBB. Yes, sir.

Mr. MAY. Did that company purchase property in South Attleboro, Mass., at one time?

Mr. WEBB. The Damort Land Corp., purchased the land.

Mr. MAY. The Damort Land Corp., is a real estate holding company for Saxonville Wholesale Lumber—

Mr. WEBB. Yes, sir.

Mr. MAY. Damort purchased the land in South Attleboro, Mass.?

Mr. WEBB. Yes, sir.

Mr. MAY. When did that occur?

Mr. WEBB. 1956.

Mr. MAY. February 1956?

Mr. WEBB. Yes, sir.

Mr. MAY. Did you own a 50-percent interest in Damort at that time?

Mr. WEBB. Yes, sir.

Mr. MAY. Now, at the time of the purchase, in February of 1956, did you obtain a mortgage?

Mr. WEBB. Yes.

Mr. MAY. Do you recall the amount of the mortgage at that time?

Mr. WEBB. \$14,000.

Mr. MAY. \$14,000 from what bank?

Mr. WEBB. Rhode Island Hospital Trust.

Mr. MAY. Now, how much did you pay for the property?

Mr. WEBB. \$20,000.

Mr. MAY. Did that include some \$1,500 worth of lumber and supplies?

Mr. WEBB. Equipment.

Mr. MAY. Equipment? Actually, you paid for the property a net of \$18,500?

Mr. WEBB. We didn't buy the inventory.

We paid \$20,000 for the property and \$500 additional for various and sundry equipment.

Mr. MAY. So, actually, the figure was \$20,000 for the purchase of the property?

Mr. WEBB. That's correct.

Mr. MAY. Mr. Chairman, we contacted the Rhode Island Hospital Trust Co. in relation to the Damort Co., and the property as of that time, and we have correspondence from them.

I will read it.

This is directed to the special subcommittee, attention Messrs. McElligott and Fitzpatrick.

Confirming our conversations, we enclose a photocopy of our valuation of the Damort Land Corp. real estate (land with all buildings and improvements thereon) situated on the westerly side of Allen Street, city of Attleboro, Mass.

It must be well noted that this valuation was for our own use in connection with our mortgage taken February 16, 1956, and we are in no way real estate appraisal experts.

Very truly yours,

GEORGE W. ELLINWOOD,
Vice President.

Mr. JONES. That was the value of the property when?

Mr. MAY. February 1956. Actually, their appraisal is attached to this letter and it is a simple notation, November 4, 1955, land——

Mr. JONES. Let me ask counsel if that was the valuation established in 1956, what is the subsequent transaction as far as the Commonwealth of Massachusetts with Mr. Webb is concerned?

What date do you hope to establish in that?

Mr. MAY. Mr. Webb's property was taken—Mr. Webb bought the property in February 1956, and the property was taken by the State in 1958, was it, Mr. Webb, the actual taking?

Mr. WEBB. No, November 1959.

Mr. MAY. Actually, the layout was filed and the date of entry was August 1959?

Mr. WEBB. Yes.

Mr. MAY. So, as of August 1959, it stated the—the value would have been as of August 1959. However, this is——

Mr. JONES. I would say this then: If there is any member who would like to question the value of that document, the Chair will entertain questions on the admission of the document.

Is it your intention, Mr. May, to offer it as an exhibit?

Mr. MAY. I intended to, Mr. Chairman, to simply set forth the value considered by the bank when they gave the mortgage to Mr. Webb in 1956.

The bank had a receipt of value of the property as of November 4, 1955, in view of this, making a consideration for mortgage.

Mr. JONES. As I understand from counsel, you are trying to establish the value in 1956 and 1959 would be—there would be some difference, and it seems to me that——

Mr. MAY. We will have considerable testimony, Mr. Chairman, beginning in 1955, 1956, and through the years up to the time of the taking and even after the taking, with respect to the value of this property.

Mr. JONES. Do you offer it as an exhibit?

Mr. MAY. I do.

Mr. JONES. Without objection, the letter which counsel read will be made part of the record and will be noted as exhibit No. 8.

(The document referred to was marked "Exhibit No. 8" and will be found in the files of the committee.)

Mr. CRAMER. What does the exhibit show?

Mr. JONES. There it is.

Mr. MAY. I would like to read the values set forth by the bank, which reads November 4, 1955, land, \$7,500; buildings, \$15,000; valued at \$22,500.

It is signed by two officers of the bank, the manager and the assistant manager.

Mr. Webb, your company operated your business at the Damort location up to when?

Mr. WEBB. Approximately a year.

Mr. MAY. Up to some time in 1957?

Mr. WEBB. Yes, sir.

Mr. MAY. And at that time it sold off the inventory and discontinued doing business there?

Mr. WEBB. That's correct.

Mr. MAY. Did you then put the property up for sale?

Mr. WEBB. Soon thereafter.

Mr. MAY. As we have already heard from Mr. Myette, he contacted you shortly thereafter?

Mr. WEBB. I used them for the purposes of selling it.

Mr. MAY. Well—

Mr. WEBB. The property.

Mr. MAY. Mr. Myette and the firm of C. H. Lawton & Son to sell this property for you?

Mr. WEBB. Well, I obtained his name through another friend of mine who just told me about a realtor. That's the way I obtained C. H. Lawton & Co.

Mr. MAY. And you agreed orally that you would pay them a 5-percent brokerage commission if they were successful in selling it?

Mr. WEBB. I don't believe there was any discussion at any time as to the amount of commission during the course of the attempt to sell. That was eventually arrived at though.

Mr. MAY. Well, Mr. Myette has testified that the standard commission is 5 percent.

Mr. WEBB. All right.

Mr. MAY. What was your initial asking price for this property?

Mr. WEBB. If I recollect correctly, it was \$27,000.

Mr. MAY. We have already received testimony today that you eventually were attempting to sell it for \$23,000, and there came a time when you would be willing to take \$20,000. Is that correct?

Mr. WEBB. \$20,000 net?

Mr. MAY. Yes.

Mr. WEBB. Yes.

Mr. MAY. Now, there came a time when you heard rumors about the possibility of a highway going through your property?

Mr. WEBB. Yes, sir.

Mr. MAY. What did you decide at that time?

Mr. WEBB. To await the final location of the roads, should I say?

Mr. MAY. You had had one offer of \$17,000 for that property?

Mr. WEBB. Yes, sir.

Mr. MAY. Did you buy out the partners' interest—

Mr. WEBB. I did.

Mr. MAY. In Damort?

Mr. WEBB. Yes, sir.

Mr. MAY. And you became the sole owner?

Mr. WEBB. Yes, sir.

Mr. MAY. Did you do that with the idea in mind of owning the entire property when the State took it?

Mr. WEBB. I had been carrying the property out of personal funds when it lay dormant, and I was receiving no aid from my other—my 50-percent owner.

So, therefore, I felt as long as I was carrying a hundred percent of the burden I might as well own it entirely.

Mr. MAY. Do you recall Mr. Myette telling you that the State would be the best buyer?

Mr. WEBB. Yes, sir. Yes, sir.

Mr. MAY. We have had thus far, Mr. Chairman, these facts relating to the possible value of this property.

We have one more here, an affidavit that I would like Mr. Constandy to read.

It has to do with another appraisal made by another individual.

Mr. BALDWIN. Mr. Chairman, before we go further in that, counsel, do you have evidence as to what the buying price was when Mr. Webb bought out his partner?

May I ask that question then, Mr. Webb? When you bought out your partner what did you pay for his half interest in this property?

Mr. WEBB. \$500.

Mr. BALDWIN. \$500?

Mr. WEBB. Yes, sir.

Mr. BALDWIN. And what date was that?

Mr. WEBB. December of 1957.

Mr. BALDWIN. Thank you.

Mr. MAY. That would not have a bearing on the value of the property though, Mr. Webb?

Mr. WEBB. We had borrowed \$3,000 from the other company, and so I bought out his \$3,000 interest because he never repaid the other company. So he got \$500 for nothing.

Mr. MAY. Mr. Constandy?

Mr. CONSTANDY (reading):

J. Benjamin Nevin, being duly sworn, deposes and says:

I reside at 144 Woodbury Street, Providence, R.I.

I have been engaged in business as a real estate broker and appraiser of real estate for the past 43 years. I am duly licensed as a broker by the State of Rhode Island and by the Commonwealth of Massachusetts. My office is located in room 2006, Industrial Bank Building, 111 Westminster Street, Providence, R.I.

In June 1954, Roscoe W. Phillips retained me to sell for him property owned by him and located at 2 Allen Street, Attleboro, Mass., consisting of a lumberyard. This property contained approximately 27,000 square feet of land and had on it, among other things, a lumber shed, small office building, and a spur railroad track. I advertised the property for sale on a number of occasions and made other efforts to sell the property but was unsuccessful. In trying to sell the property I offered it for sale in two different forms: (1) As a going business; that is, the sale was to include, in addition to the land, buildings, and spur track, the lumber then on the property, all equipment, trucks, etc.; (2) I also offered it for sale without the lumber and equipment, trucks, etc., and as stated before I was not successful in finding a buyer.

The property was difficult to sell because it was a long, narrow, and small piece of land largely occupied by the buildings on it.

On May 4, 1955, Roscoe W. Phillips died and thereafter I was requested by the Industrial National Bank of Providence to appraise the property at 2 Allen Street, Attleboro, Mass., for inheritance tax purposes. I made the appraisal and

my valuation of the land and buildings and other improvements was \$20,000 as of May 4, 1955.

I have made this affidavit voluntarily and willingly at the request of James J. Fitzpatrick who identified himself to me as an associate counsel for the Special Subcommittee on the Federal-aid Highway Program, Committee on Public Works, House of Representatives, Washington, D.C.

J. BENJAMIN NEVIN.

Sworn to before the notary the 18th day of January 1962.

Mr. MAY. Mr. Nevin, of J. Benjamin Nevin Co., provided us with his appraisal for the Damort property.

Mr. Chairman, I think there is a note in here which is of interest to the committee in its understanding of what the property consisted of and what the problems were in the sale of it and that, of course, affected the value.

Under his remarks he states, in his appraisal—

This is a small lumberyard, located off the main line of track, on Route 1, from Providence to Boston.

The property is at least one block in and cannot be seen from the main road. For the past year and a half my offices have tried to obtain a buyer for this lumberyard as a going business, but we have not been successful.

In fact, we have not obtained an offer for the yard either with the inventory or without the inventory.

As I see this property, the one great trouble is that it runs right to the Massachusetts-Rhode Island line and is a little more removed from the Attleboro and Rhode Island trade which doesn't like to cross the line to do business in Massachusetts.

He continues on with the following page:

As a lumberyard, if a buyer can be found to start a lumberyard I feel a price of \$25,000 might be obtained for this property. On the other hand, I feel the ordinary buyer would not pay over \$20,000 for this property.

In my opinion, the fair market value of parcel No. 3, as of May 4, 1955, is \$20,000.

Mr. CRAMER. May I ask counsel a question?

Mr. JONES. Yes, indeed.

Mr. CRAMER. Is evidence going to be submitted as to what the appraisal on behalf of the State was on this property?

Mr. MAY. Yes; in detail tomorrow, Congressman. We will also hear from the people who appraised this property.

May we make those documents exhibits 9-A and 9-B, Mr. Chairman?

Mr. JONES. Without objection, it is so ordered. They will be marked "A" and "B" of exhibit 9.

(The documents referred to were marked "Exhibits 9-A and 9-B" and will be found in the committee files.)

Mr. MAY. Mr. Chairman, we have already heard considerable testimony with respect to the possible value of this piece of property.

On May 4, 1955, Mr. Nevin says it was worth between \$20,000 and \$25,000. February 8, 1956, bought by the Damort Corp. for \$20,000.

The bank appraised it February 16, 1955—pardon me—yes; for \$22,500.

Mr. Webb tried to sell it for \$23,000. Could not sell it. Mr. Webb tried to sell it for \$20,000. Could not sell it.

Mr. Myette tried to rent the property and was able to get it for \$75 a month. The most they were offered for the property was \$17,000.

Mr. Webb, did you hear the testimony from Mr. Myette concerning Mr. Harney's approach to him? That is, Mr. Harney's suggestion that "It would do you all some good if you would retain Mr. O'Connell"?

After speaking with Mr. Harney, did Mr. Myette call you and relate what had taken place?

Mr. WEBB. Yes.

Mr. MAY. And what did he say? Do you recall?

Mr. WEBB. That he had talked to Mr. Harney, who represented the Commonwealth, and Mr. Harney had suggested an attorney, James S. O'Connell, as an individual who was familiar with land-taking cases.

Mr. MAY. Did Mr. Myette describe Mr. O'Connell in any other way to you?

Mr. WEBB. No.

Mr. MAY. What did you say to Mr. Myette?

Mr. WEBB. I said, "Go see him."

Mr. MAY. We heard testimony from Mr. Myette that they did go, that he and Mr. Lawton did go and see Mr. O'Connell.

You have heard testimony that when they got there Mr. Harney was there. Mr. Harney sat in the meeting with Mr. O'Connell and Mr. Myette. Mr. Harney participated in the meeting. After the meeting did Mr. Myette recontact you?

Mr. WEBB. Yes; he did.

Mr. MAY. And what did he say then?

Mr. WEBB. That he had seen O'Connell and that he was unable to obtain any vital information.

Mr. MAY. Did he tell you that Mr. O'Connell wanted a letter from you, retaining Mr. O'Connell?

Mr. WEBB. Yes, sir.

Mr. MAY. Did you send Mr. O'Connell such a letter?

Mr. WEBB. I did.

Mr. MAY. When did you first have some contact with Mr. O'Connell? Did that—

Mr. WEBB. Personal contact?

Mr. MAY. Well, did that come from personal contact or telephone?

Mr. WEBB. I sent the letter first. I believe I had a phone—a short phone conversation with Mr. O'Connell in the summer of 1959.

Mr. MAY. You also—yes; we have your records, Mr. Webb.

You did direct a letter to Mr. O'Connell, July 6, 1959, concerning the possible liquidation of the corporation.

Was your telephone contact with him a few days before that?

Mr. WEBB. I think that was my first indicated desire to him—no. There is a previous letter, which I do not have.

Mr. O'Connell has a letter, and it was available in the Boston Federal court, but I do not have a copy and I don't know why.

Mr. MAY. The letter you are talking about now is the letter you sent to him retaining him?

Mr. WEBB. That's correct, sir. That is my first letter.

Mr. MAY. So we might be able to establish the first telephone contact with Mr. O'Connell as a few days prior to July 6, 1959?

Mr. WEBB. Yes; at approximately that time.

Mr. MAY. Now, you were notified by letter, dated July 16, 1959, by the department of public works, that they had received Mr. O'Con-

nell's letter and, as far as they were concerned, he was representing you unless they heard to the contrary?

Mr. WEBB. Yes, sir.

Mr. MAY. Do you recall your first contact, whether personally or by telephone, with Mr. Frank L. Harney?

Mr. WEBB. In the summer of the same year, 1959, Mr. Harney called me on the phone.

Mr. MAY. Approximately about August 1959?

Mr. WEBB. Approximately.

Mr. MAY. And what happened at that time?

Mr. WEBB. He asked me how much I wanted for the land in South Attleboro, and I said \$30,000.

He said, "If I get you \$35,000, is that all right?"

And I said, "OK."

Mr. MAY. That is a kind of triplicate call.

Mr. WRIGHT. Mr. Chairman, may I be clear on this? This is Harney talking? This is not O'Connell?

Mr. WEBB. This is Mr. Harney.

Mr. MAY. Harney said, "How much do you want?" And you said, "\$30,000." And he said, "Suppose I get you \$35,000?"

And you said "OK."

(Mr. Webb nods affirmatively.)

Mr. MAY. With the feeling that you would get \$30,000 and somebody else would get \$5,000? Was that your impression?

Mr. WEBB. Well, I would draw the conclusion that since I had already obtained the services of Mr. O'Connell, that he was handling the matter.

Therefore, if the State paid \$35,000 for the property, presumably the compensation would be \$5,000.

Mr. MAY. Now, we want to make it clear. You would have been satisfied with \$30,000 and, as a matter of fact, you considered that that would give you some small profit of about \$6,000. Is that correct?

Mr. WEBB. That's right. Yes, sir.

Mr. MAY. We might point out, Mr. Chairman, that we are aware, having reviewed the State records, that as of this phone call by Harney, talking about a possible \$35,000, the State had not yet even assigned a fee appraiser or departmental appraiser to this property.

About September did you take over the handling of this matter for Mr. Myette and Mr. Lawton?

Mr. WEBB. In the course of a phone conversation with Mr. Myette, inquiring as to what was in the process of developing with respect to the land taking, I suggested that in view of the fact that my office was only a 10-minute walk from Mr. O'Connell's office that, therefore, I would do all the contacting be it personally or by phone.

Mr. MAY. Thereafter did you make visits to Mr. O'Connell's office?

Mr. WEBB. I made no—yes, quite a few.

Mr. MAY. Were you able to locate and contact Mr. O'Connell at all?

Mr. WEBB. On occasion I was able to see him.

Mr. MAY. What sort of conversations did you have with Mr. O'Connell?

Mr. WEBB. Well, they were nebulous in results because he had nothing to offer. He said, "We are working on the case."

Mr. MAY. Did you ever, throughout this whole affair, ever tell Mr. O'Connell that all you wanted was \$30,000?

Mr. WEBB. I never talked to him on that score.

Mr. MAY. Did you ever, throughout this affair, ever discuss fee with Mr. O'Connell?

Mr. WEBB. Never.

Mr. MAY. There came a time, perhaps November 1959, that you received a telephone call from a departmental appraiser?

Mr. WEBB. Yes, sir,

Mr. MAY. Who was that? Do you recall?

Mr. WEBB. Mr. Hopkins.

Mr. MAY. Errol Hopkins?

Mr. WEBB. Yes.

Mr. MAY. And what did he have to say?

Mr. WEBB. He was—he inquired—he did state to me that he knew that I had—I, meaning “we,” had purchased the property for \$20,000 and he indicated that whatever price may have been talked about, of which I had no knowledge, it was pretty high.

That is the gathering I got from the phone conversation.

In order to get—to avoid becoming involved I suggested that he contact James S. O'Connell, gave him the phone number, and told him to call him as he was my—he was the attorney handling the case for the Damort Corp.

Mr. MAY. As best you can, would you relate again what Mr. Hopkins said?

Mr. WEBB. He stated, “Mr. Webb, you paid \$20,000 for the property.” And he said, “Do you know how much land there is? There is only 27,000 square feet.”

I think he indicated that the buildings were, shall I say, old, and the actual purpose of the call I never ascertained from him, because I cut him off by suggesting he call O'Connell.

Mr. MAY. Did Mr. Hopkins indicate that the value, having been discussed with him, not by you, but by someone else, seemed to be high to him?

Mr. WEBB. That is an impression of my own and something that I had no knowledge of at the time.

So, therefore, I can't determine from his conversation as to what he knew—I have got a letter that I directed to O'Connell—

Mr. MAY. I have the letter here. I am more interested in what Mr. Hopkins said.

I still do not think it is clear on the record what Mr. Hopkins did say to you at that time. Would you do it once more?

Mr. WEBB. I believe he indicated that he was connected with the State. I believe that he was interested in the property for some reason, which he did not state to me.

He talked to me about the property, and he said, “Mr. Webb, you only paid \$20,000 for the property.”

I think that is—that is all I can recall at the moment.

Mr. MAY. All right. Thereafter you wrote a letter to Mr. O'Connell, dated November 20, 1959, did you not?

Mr. WEBB. Yes, sir.

Mr. MAY. And in that letter you said:

A Mr. Errol Hopkins, of the Commonwealth, called me and wanted to discuss the subject of the property. I referred him to you.

His home telephone number is JA 4-3699.

Do you recall doing that?

Mr. WEBB. Yes, sir.

Mr. MAY. Mr. Chairman, may we present this to the witness and have him identify it?

Thank you, Mr. Webb.

Mr. Chairman, may we make that exhibit 10?

Mr. JONES. Without objection, it will be entered as exhibit 10.

(The document referred to was marked "Exhibit 10" and will be found in the files of the committee.)

Mr. CRAMER. May I see it?

Mr. JONES. Yes. Just a moment, please. Mr. Cramer would like to examine it. Withhold your questions just a minute.

Mr. CRAMER. Go ahead. Go ahead.

Mr. JONES. If you want to examine him about the document—

Mr. CRAMER. Are my questions limited to the document, Mr. Chairman?

Mr. JONES. Well, in a general way, yes.

Mr. CRAMER. Generally limited to the document. Well, then, relating to this document, when Mr. Hopkins called you I assume he identified himself, did he not?

Mr. WEBB. Yes, sir.

Mr. CRAMER. As a State appraiser?

Mr. WEBB. No. I don't think he did.

Mr. CRAMER. How did he identify himself?

Mr. WEBB. Well, as I stated in the letter, he was a representative of the Commonwealth.

Mr. CRAMER. He did not say he was an appraiser for the department of public works. Is that right? But you understood he was employed by the State?

Mr. WEBB. Yes; that is correct.

Mr. CRAMER. And what was your reaction to his call? Did you not think it was something funny about him calling you?

Mr. WEBB. I never did find out what his reason for calling was, except that—

Mr. CRAMER. Yet—

Mr. WEBB. I didn't know how he became connected with it, because I had no prior knowledge of his—

Mr. CRAMER. That is the point. How did he know, for instance, so far as you know—how did he know what price you had set on the property? He told you, did he not, that you were asking more than it was worth?

Mr. WEBB. No; he never said that to me.

Mr. CRAMER. What did he say? He said words to that effect?

Mr. WEBB. I gathered from the way he was questioning me about the price that I had paid for it, that whatever figure he had knowledge of was high.

Mr. CRAMER. So that your conclusion was he had prior knowledge of what your discussions had been?

Mr. WEBB. That is my conclusion.

Mr. MAY. Now, did you subsequently have a conversation with Mr. Harney about Mr. Hopkins?

Mr. WEBB. I did, sir.

Mr. MAY. Will you tell the committee what took place?

MR. WEBB. I think I made an unexpected visit to Mr. O'Connell's office at 11 Beacon Street, and due to my unexpectedness in being there, Mr. Harney was there and Mr. O'Connell was in the office at the same time.

I referred to my letter with respect to Mr. Hopkins, as to what he had to do with this, and Mr. Harney said to me he had taken care of Mr. Hopkins.

MR. WRIGHT. Mr. Chairman, could we have some elucidation on that particular point?

MR. JONES. Yes.

MR. WRIGHT. He said that he had taken care of Mr. Hopkins?

MR. WEBB. I asked the question in the presence of Mr. O'Connell and Mr. Harney and in Mr. O'Connell's office.

I said, "What is Mr. Hopkins doing in this, calling me, and asking me questions about the property?"

And Mr. Harney said, "I have taken care of Mr. Hopkins."

MR. WRIGHT. Did any further details explain what he meant by that statement?

MR. WEBB. No, I can't—

MR. WRIGHT. He did not volunteer any additional information?

MR. WEBB. No, sir.

MR. WRIGHT. You did not ask for any?

MR. WEBB. No, sir.

MR. JONES. Counsel may proceed.

MR. MAY. Mr. Webb, did not Mr. Harney say at that time that he had taken care of—

MR. CRAMER. Now, Mr. Chairman—

MR. JONES. Yes, Mr. Cramer?

MR. CRAMER. I would like to know what the practice is going to be now.

The gentleman from Texas, as far as I am concerned, has a right to do what, I think, every member of the committee should be able to do, interrogate the witness with regard to matters not relating in any way to the documentation, but if he is going to be able to do it, I think all members ought to be treated the same way with regard to questions.

MR. JONES. Then the Chair will try to be impartial so that every member will have an equal opportunity to put his examination to the witnesses.

MR. WRIGHT. Mr. Chairman, in defense of the impartiality of the chairman, let me just make the observation—

MR. CRAMER. It needs some defending, I will say that.

MR. WRIGHT. It might make some of the other members feel a little better.

The chairman inhibits me a little bit, too, somewhat more privately such as before we got started this afternoon.

He said, "Jim, let's let the counsel develop the case here and stop butting in so much."

So I have tried to do that, and I sympathize with the other members who feel an impulse to ask questions, and in this instance I thought it was an admissible one, perhaps, on the ground that I was trying to elicit a clearer understanding of exactly what the witness was saying.

Mr. CRAMER. Well, if the gentleman will yield, that is the very point—

Mr. JONES. Well, I will say—

Mr. CRAMER. About butting in—

Mr. JONES. I appreciate the generosity of all of the members who have cooperated so handsomely with the chairman in trying to get this investigation underway in an orderly fashion, and so let counsel proceed with the examination of the witness.

Mr. CRAMER. I thought counsel was employed by the committee, by both the majority and minority, by all members of the committee, and I thought what counsel did was equally of concern to the minority as it is to the majority, and I do not construe it as butting in when a member of the committee says something is not understood and asks for clarification or wants to ask a question about it.

And I think a ruling to that effect from the chairman prevents all the information from coming out.

Mr. JONES. The chairman did not make that ruling.

Mr. CRAMER. Well, that is what I understood the ruling to be.

Mr. JONES. If there is any question that you did not understand or any question propounded by counsel—and it is not for the purpose of cutting anybody off—as I said repeatedly, and I say it again, you are going to have full and ample opportunity to examine this witness and every other witness.

The only thing the chairman is trying to do is to put it in the proper season as to when you will go on the scene to make an examination of the witness.

Now, the chairman, that is the present occupant of the chair, did not establish the procedures of this subcommittee. And all I am trying to do is proceed with the established precedents of this subcommittee and, therefore, the Chair rules that the counsel will examine the witness and, of course, will indulge any member to make examination of documents, or, if there is any question that you do not understand or any procedure that the counsel is employing, you may direct a question to the Chair and we will have an explanation from counsel.

I think that is fairly simple. I do not see that anybody is trying to foreclose you or any member of the majority or minority from having full and complete examination.

I do think, in fairness to the witness though, who has never been before a congressional committee before, a witness appearing here under oath needs the guidance and protection of the Chair and is not to be disconcerted, because this is not a judicial proceeding.

It is an inquiry to establish facts that surround this entire transaction or series of transactions which the staff is trying to present to the committee as a result of their investigation.

Mr. CRAMER. Well, Mr. Chairman—

Mr. JONES. Now, if anybody can be any fairer than that, I do not know how—we are just not going to let these continuous interruptions go on. You cannot proceed to an understanding of the continuity of a witness' testimony. Yes?

Mr. CRAMER. Well, I thought the purpose of these hearings was to inform the members of the subcommittee as to what the facts are surrounding, in this case, whatever wrongdoings occurred in Massachusetts, with a view toward this subcommittee promulgating legislation

or making recommendations which at a future date this subcommittee will have to consider in light of the evidence received and made available to the members of this subcommittee, at which time we have a job of presenting the case to the Congress at a future date——

Mr. JONES. The gentleman——

Mr. CRAMER. In augmentation and support of that legislation or those recommendations.

And if a member does not understand fully the documentation the evidence that the witness is testifying to, even though the staff may be fully familiar with it because they have been through it all, although they have not necessarily informed the members of the committee as to their contents, then I think a committee member has a responsibility to make sure that he understands the facts, and that is all I have been trying to do.

Mr. JONES. The gentleman——

Mr. CRAMER. And, contrary to any thinking from the chairman to the contrary, I do not expect——

Mr. JONES. The gentleman from Florida states the case a little bit better than I have stated it, because that is exactly what I have been trying to do.

So I have halted, at every moment that there was any question about a document, the examination of the witness with respect to that document and, of course, we will continue to have you ask questions, and we will take whatever time is necessary for you to make full and complete examination of the documents or of the witness with respect to a document.

So the counsel will proceed with the examination of the witness.

Mr. MAY. Had we progressed, the counsel would have clarified it in this way, Mr. Webb.

When you told Mr. Harney that Mr. Hopkins had contacted you, and you had referred him to Mr. O'Connell you wondered what Mr. Hopkins was doing interjecting himself in this affair?

Did not Mr. Harney say he had taken care of that appraiser from Jamaica Plain? Did he not say that?

Mr. WEBB. I can't be positive exactly. I don't know whether that is a quote or not.

Mr. MAY. Did he say——

Mr. WEBB. He knew the individual.

Mr. MAY. He had taken care of Hopkins?

Mr. WEBB. Yes.

Mr. MAY. Did he tell you that he had told Hopkins that if he wanted to keep his job with the State that he had better mind his own business?

Mr. WEBB. I think there was something said along that score.

Mr. MAY. That clarifies it somewhat.

Mr. Chairman, Mr. Hopkins, we know from the records, was a State appraiser assigned to appraise the Damort property.

Now, Mr. Webb, in about early December or late November did you receive another call from Mr. Frank Harney?

Mr. WEBB. I did.

Mr. MAY. What did he say on that occasion?

Mr. WEBB. He said, "I have been able to obtain a price of \$42,500." I said, "What good is that to me?"

Mr. MAY. What did he say?

Mr. WEBB. That concluded the conversation.

Mr. MAY. Another short conversation?

Mr. WEBB. Yes, sir.

Mr. MAY. Yet, he said to you, "Now, I have been able to get the price of \$42,500 for the property." And you said, "What good is that to me?"

Mr. WEBB. Yes, sir.

Mr. MAY. You, feeling that you were still going to get the \$30,000?

Mr. WEBB. That's right.

Mr. MAY. By this time Mr. Hopkins had been assigned by the department to appraise the property as of November 4, 1959—I am sorry—as of November 4, 1959, there were fee appraisals assigned. So this was moving along. No appraisals had been submitted to the department of public works. Yet, Mr. Harney had gone from \$35,000 to \$42,500.

The records show that Mr. Ernest Collins, on December 4, 1959, submitted his appraisal on the Damort property. Mr. Collins was a fee appraiser and his appraisal was \$65,000.

On December 18, Mr. Errol Hopkins, of the department, submitted his appraisal, \$54,000. And on December 28, 1959, Joseph Schwartz submitted his appraisal, \$67,000.

Records show that the Damort case was submitted to the review board January 21, 1960. The board did not set any value as of that time, but, instead, requested the department to have another appraisal made.

On January 29, 1960, Deputy Commissioner—Associate Commissioner George Toumpouras, by letter, authorized Charles H. Lawton to appraise the Damort property.

Mr. Lawton submitted his appraisal, signed February 13, 1960, \$60,000.

On February 6, 1960, the review board authorized payment of \$60,000.

Mr. Webb, how did you learn that the Commonwealth was willing to pay \$60,000 for your property?

Mr. WEBB. I received a letter from the Commonwealth of Massachusetts, Department of Public Works, stating that they had accepted my price of \$60,000, signed by Mary McMorro.

Mr. MAY. This was a land-damage agreement sent to your office at the lumber company?

Mr. WEBB. I don't have a copy of that. The only thing I have is a letter.

Mr. MAY. Well, did you get it or did your secretary get it?

Mr. WEBB. The girl—the secretary or the bookkeeper in the Saxonville Lumber & Warehouse Co. received the document from the Commonwealth, because that was the home address of the Damort Land Corp.

I asked her—this was, presumably, a certified letter or a registered letter—I asked her to open it up and she gave me the figure over the phone.

Mr. MAY. What did you think of that?

Mr. WEBB. I don't know what I thought.

Mr. MAY. Were you somewhat surprised at the figure?

Mr. WEBB. I think I was quite shocked.

MR. MAY. Now, there came a time for you to go and collect the money, April 4, 1960.

Does that sound familiar? Is that when you went to Mr. O'Connell's office as a result of his receiving the check from the Commonwealth?

MR. WEBB. It's about that date.

MR. MAY. And who was there when you got to Mr. O'Connell's office?

MR. WEBB. Mr. Harney.

MR. MAY. The check had come in from the Commonwealth and there sat Mr. Harney. What conversation did you have with Mr. Harney at that time in the presence of Mr. O'Connell?

MR. WEBB. I asked him how he got the price up to \$60,000. He told me—he gave me—he said “I had”—I think he said, “I had three appraisals, \$54,000, \$64,000, and \$67,000, and then I had to arrange for another appraiser, and I arranged for Mr. Lawton to appraise—I had to arrange for another appraiser and, therefore, I obtained the services of Mr. Lawton, and paid him a fee appraisal”—or an appraisal fee.

MR. MAY. This is Harney telling you how he brought this thing about?

MR. WEBB. Yes, sir.

MR. MAY. There isn't any question he said, “I was able to do this”?

MR. WEBB. Yes, sir.

MR. MAY. Mr. Chairman, this is most important. This not only shows the fruition of the conspiracy but it might cause some wonderment about the controls being exercised in this program.

A person like Mr. Harney, on a preliminary interview within the department, being able to arrange such things, being able to have particular people sign for the property, and being able to get them to come in with certain figures.

Were you surprised that Mr. Lawton was one of the fee appraisers?

MR. WEBB. Yes. Yes; I was.

MR. MAY. Have you known that he appraised the property up to that moment?

MR. WEBB. No, sir.

MR. MAY. How much was the check from the State?

MR. WEBB. \$47,000 plus.

MR. MAY. Mr. Kopecky, how was the check from the State?

MR. KOPECKY. The check to Damort was, according to DPW, \$47,383.37.

MR. MAY. What was the distribution?

MR. KOPECKY. The DPW also sent a check to Rhode Island Trust Co. to cover the mortgage and that was in the amount of \$12,269.97.

And the DPW also sent a check to the city of Attleboro for taxes for \$558.69, or, a total of \$60,212.30.

MR. MAY. Actually, Mr. Chairman, the award was for \$60,000 even and then there was an allotment of \$212.03 for taxes, and this is the procedure, the department paid to the city of Attleboro money for the taxes, paid off the mortgage, and the remainder went to the property owner?

MR. WEBB. The check was addressed in care of James S. O'Connell, Damort Land Corp.

MR. MAY. The check was made out to you for \$47,383.37?

Mr. WEBB. Yes, sir.

Mr. MAY. Mr. O'Connell had that check?

Mr. WEBB. That's right.

Mr. MAY. Now, there came a time for you to receive your just reward. How did you go about that?

Mr. WEBB. He asked me to endorse the check. I was the president and treasurer and all of the officers of the corporation, and I wouldn't endorse the check until I had some receipt or I requested that he give me a postdated check which would cover what I considered the agreement.

He refused to do that. So I, before—before I would sign it, I said, "Well, give me a receipt that you have received this check and I will endorse it then."

Mr. MAY. At what point did you realize how much money you were going to get from this check?

Mr. WEBB. Well, the reason—the reason I insisted on this procedure was because I was afraid I wouldn't get what I had originally agreed to in the first place.

Mr. MAY. We must remember that at no time had you told Mr. O'Connell that you wanted only \$30,000?

Mr. WEBB. No.

Mr. MAY. You had only told Mr. Harney?

Mr. WEBB. That's correct, sir.

Mr. MAY. Did there come a point in the conversation when Mr. O'Connell or Mr. Harney told you, "Well, you are going to get totally \$30,000 for the whole deal and so you will only get \$17,000-and-some-odd from the check"?

Mr. WEBB. I don't think that that subject was even brought up at that particular time.

Mr. MAY. Not even when you were asking for a receipt and you didn't know how much money you were going to get?

Mr. WEBB. Not really.

Mr. MAY. Did you ever mention to Mr. O'Connell or Mr. Harney, or to both of them, something about money going elsewhere?

Mr. WEBB. I said—I said in the presence of Mr. Harney and Mr. O'Connell that "this is a"—substantially these words—"this is a pretty good deal but I suppose there's a lot of other people involved."

And I did get a verbal agreement that that was a possibility.

Mr. MAY. Can you be any more clear than that, Mr. Webb?

Mr. WEBB. Well, there were no names involved. So, therefore, I can't specify in that respect.

All I can state is that I made a verbal assumption to them. Whether there was a question or not, I don't know that. "I supposed a lot of this money has to be passed around." Those are somewhat the words. They may not be exact.

Mr. MAY. Did either of them answer that comment?

Mr. WEBB. Yes. Mr. Harney answered it, "of course," or generally in agreement.

Mr. MAY. Now, we have here a situation where the State has paid for your property \$60,000.

Were you concerned about possible capital gains tax?

Mr. WEBB. I had already stated this innumerable times, that I had no intention of paying capital gains tax on anything in excess of \$30,000.

Mr. MAY. Did you bring that up to Mr. O'Connell?

Mr. WEBB. Yes, sir.

Mr. MAY. What did he have to say?

Mr. WEBB. Well, he understood my desires in that respect.

Mr. CRAMER. May I ask a question here, Mr. Chairman?

Mr. JONES. Yes, Mr. Cramer.

Mr. CRAMER. Did he advise you as to what your legal rights or liabilities were in that respect?

Mr. WEBB. With respect to the capital gains tax?

Mr. CRAMER. Yes.

Mr. WEBB. No, sir.

Mr. CRAMER. What your liability would be, if any, on this money that he received, and so forth?

Mr. WEBB. No, sir.

Mr. CRAMER. He did not advise you about it at all at that time?

Mr. WEBB. No, sir.

Mr. JONES. Any further questions from counsel?

Mr. BALDWIN. I have a question.

Mr. JONES. Yes, Mr. Baldwin.

Mr. BALDWIN. How did you show it on your income tax return?

Mr. WEBB. I liquidated the corporation within 2 months and reported a compensation slip paid to James S. O'Connell, of \$30,000.

Mr. BALDWIN. Would you repeat that?

Mr. WEBB. Because the check was made out to the Damort Land Corp., I had to show the dispensing of the moneys in order to protect the possibility of being taxed on capital gains.

So, therefore, my accountant sent Mr. O'Connell, Mr. Lawton also, little slips—I think it is a compensation slip—stating that the Damort Land Co. had paid to him \$30,000.

Mr. CRAMER. Paid to him?

Mr. WEBB. James S. O'Connell.

Mr. JONES. Counsel will proceed.

Mr. CRAMER. Well, you have some documentation of that there? Is that what you are getting at?

Mr. WRIGHT. Whereabouts or—how did you describe this \$30,000? As attorneys' fees?

Mr. WEBB. I don't know, sir, yet. Form 1099. Legal fees and expenses.

Mr. BALDWIN. \$30,000?

Mr. WEBB. Yes, sir.

Mr. BALDWIN. Shown to Mr. O'Connell?

Mr. WEBB. James S. O'Connell, 11 Beacon Street, Boston.

Mr. BALDWIN. Thank you.

Mr. CRAMER. Legal fees and what? Other expenses?

Mr. WEBB. Expenses. And expenses.

Mr. MAY. Mr. Webb, actually at that first meeting, you walked away with no money whatsoever. Is that right?

Mr. WEBB. Yes, sir.

Mr. MAY. So you still needed some money. You went back to see Mr. O'Connell April 8, 1960, a few days later?

Mr. WEBB. He called me.

Mr. MAY. He called you?

Mr. WEBB. Yes, sir.

Mr. MAY. You went up to his office? At this time Mr. Harney was not there. Is that right?

Mr. WEBB. No; he was not there.

Mr. MAY. Mr. O'Connell gave you your check of the—pardon me—he gave you his personal check.

Is that right?

Mr. WEBB. He gave me a check, personal check, signed client's account.

Mr. MAY. For how much?

Mr. WEBB. \$17,383 and cents—17 cents.

Mr. MAY. 37 cents?

Mr. WEBB. 17—

Mr. MAY. \$17,383.37.

So, actually, out of the award you got \$30,000 and he got \$30,000?

Mr. WEBB. Yes, sir.

Mr. MAY. However, you had to pay, or you did pay, Mr. Lawton's firm \$1,500?

Mr. WEBB. Yes, sir.

Mr. MAY. For what?

Mr. WEBB. I paid a commission.

Mr. MAY. A commission. Now, when you were talking with Mr. O'Connell, at the time he gave you the check, what did he have to say to you?

Mr. WEBB. He called me and said he had the check ready. Presumably he was awaiting the clearance of the check through a bank.

So, therefore, the delay of time, and he handed me a check for \$17,000 plus. He didn't say anything to me.

I asked him a question at that time, and I said, "Supposing somebody asked me something about this particular transaction?"

He recommended three things: (1) That the property was worth \$60,000; (2) that we had met each other at lunch someplace, so we had a prior acquaintance to meeting a year prior—

Mr. MAY. That meant that you should not say that Mr. O'Connell had been referred by Mr. Harney but, rather, you should say that you had met Mr. O'Connell at lunch and had a prior acquaintanceship with him, and thereafter you retained him through this personal relationship?

Mr. WEBB. That is correct; yes, sir.

Mr. MAY. What was the third thing?

Mr. WEBB. That Mr. Harney and Mr. O'Connell were not together in his office.

Mr. MAY. Mr. Harney had not been together with Mr. O'Connell in Mr. O'Connell's office?

Mr. WEBB. That's right.

Mr. MAY. We have had testimony, Mr. Webb, about the destruction of some records. Could you enlighten us about that?

Mr. WEBB. Following the payment—

Mr. MAY. Before you do, to lay the groundwork there, after you received the call from Harney, around November or December of 1959, wherein he said that he could get \$42,500, did you thereafter send a letter to the Lawton firm?

Mr. WEBB. As far as the destruction of records is concerned, the destruction of records really hasn't, I don't believe, anything to do with stating a price of \$30,000 to the Lawton firm.

I think they had actually no knowledge of what I had said in the way of a price, that this \$30,000 was the figure I desired.

The figures that were destroyed in the following summer, after the transaction was completed, the figures—the letters and bill that was destroyed had reference to prior years at which time I had stated, in letters, that I would be willing to accept a price of \$27,000 or \$23,000.

And the only reason that we have documentation that there is a willingness to accept the \$20,000 net price is due to the fact that that was attached to the back of one letter and initialed.

MR. MAY. All right. Did you ever, during the course of this affair, write to the Lawton company that you would not pay a commission on anything received above \$30,000?

MR. WEBB. Frankly, I don't think I ever wrote to them on that score. The only time it was ever mentioned was in O'Connell's office, when I said I will not pay a real estate commission on any price over \$30,000, nor will I pay capital gains tax on anything over \$30,000.

MR. JONES. Is there anything further, Mr. Counsel?

MR. MAY. Just one item. The State did not take all of your property. There was a small portion left.

Whatever happened to that?

MR. WEBB. I sold it.

MR. MAY. For how much?

MR. WEBB. \$1,000.

MR. MAY. For which you paid \$100 commission?

MR. WEBB. Yes, sir.

MR. MAY. Who sold the property?

MR. WEBB. C. H. Lawton.

MR. MAY. Excuse me, but I have just one more item, Mr. Chairman. Certain improvements existed on this property; for example, railroad track, fencing, and other improvements, whatever—

MR. JONES. Are you talking about a description of the property?

MR. MAY. No. I am trying to find out if Mr. Webb knows what happened to the improvements that existed on the property. Do you know?

MR. WEBB. I have no idea what happened to them.

MR. JONES. Mr. Wright?

MR. WRIGHT. Mr. Webb, at what point in this transaction did you realize that you were engaged in a conspiracy with Mr. Harney and Mr. O'Connell?

MR. WEBB. I would say, probably, when he called in December of 1959 and said that he was able to obtain \$42,500.

MR. WRIGHT. Thereafter your transactions with O'Connell and with Harney were carried out in the realization that this was an improper conspiracy, as far as the State was concerned?

(There was no response.)

MR. WRIGHT. Let me rephrase that.

Following that, it became more evident to you—

MR. WEBB. That's correct.

MR. WRIGHT. That a conspiracy was present?

Now, so far as you were able to adduce, it was Harney, rather than O'Connell, who took credit for arranging the appraisals in such a way that the State would grant \$60,000 for your property. Is that correct?

Mr. WEBB. His conversation with me would indicate that it was his doing.

Mr. WRIGHT. And this conversation was in the presence of O'Connell?

Mr. WEBB. Yes, sir.

Mr. WRIGHT. Following all of this, you stated that you had a conversation with O'Connell relative to three matters, that O'Connell suggested if you should be questioned in this regard that you should say, first, the property was worth \$60,000; secondly, that you had never seen Harney in O'Connell's presence; thirdly, that you had been attracted to O'Connell as an attorney through your personal relationship with him or personal——

Mr. WEBB. Yes.

Mr. WRIGHT. Rather than Harney's having directed you to him?

Mr. WEBB. Well, he directed me through Mr. Myette.

Mr. WRIGHT. What made you feel at that time that you might be questioned about this matter?

Mr. WEBB. Well, first of all, \$30,000 for legal fees and expenses are rather an expensive way of getting a land settlement.

Mr. WRIGHT. You knew at no point up to that time that an investigation was underway or that this matter was the subject of an inquiry?

Mr. WEBB. I had no knowledge of that.

Mr. WRIGHT. But you were able to deduce, of your own reasoning, that a \$60,000 settlement with a \$30,000 fee was the kind of thing which might cause people to inquire?

Mr. WEBB. That's correct.

Mr. WRIGHT. Let me just ask you: At the time you finally realized that it was a conspiracy, why did you go through with it?

Did you feel that you had just gotten too far into it then and nobody would believe you if you attempted to withdraw from it?

Mr. WEBB. I have asked myself that question innumerable times, not only in my own presence, but in the presence of other interested parties. I haven't yet found the right answer to that. I did determine, in the very last stages of all of this, that my act of trying to make sure that I had a receipt for the check that was in the hands of Mr. O'Connell was an effort on my part to not absolve myself, but to make sure that I tried to keep enough records, which I had not had prior to that, so that if questions ever came up I would have some evidence that I was trying to protect my \$30,000 position.

When I received the check from Mr. O'Connell, his personal check for \$17,000, I held that for evidence, because I was leery that someone might state that I had been paid in cash a certain sum of money which would be—would make me over and above \$30,000.

Mr. WRIGHT. At this time was your interest primarily that of protecting yourself against capital gains taxation, or protecting yourself against implication, should there be further inquiry into the matter?

Mr. WEBB. Well, I was already implicated to some extent. I think it was a dual purpose.

Mr. WRIGHT. Mr. Webb, this goes very near, I think, to the heart of the attitude of all of us with regard to things of this type.

In the very beginning, when Mr. Harney suggested to you that he knew an attorney who had some influence in the capitol and who,

thereby could be expected to get you a pretty good price for your property, you did not think there was anything wrong with that, did you?

Mr. WEBB. Well, it didn't start out that way. It started out with a man suggesting an attorney who had familiarity with this problem. So, therefore, he was retained prior to any discussion about prices.

Mr. WRIGHT. So, in the bargaining, there was no implication of anything wrong except that you were going to see an attorney who was represented to you as a man with experience in this particular field.

Mr. WEBB. That's correct.

Mr. WRIGHT. Is that correct?

Mr. WEBB. Yes, sir.

Mr. WRIGHT. Then when first you got the indication that you could get your \$30,000 and someone else might get \$30,000, did this seem a little unusual to you but not sufficiently unusual as to make you feel you were involved in a conspiracy?

Mr. WEBB. Is it the matter of degree that you are talking about?

Mr. WRIGHT. This is what I am trying to get at: At what point does a person realize that this is wrong?

Mr. WEBB. Well, first of all, it starts off with the fact that the people who get the headlines in the paper are those that have the problem of obtaining this money as fast as they should get it.

So, therefore, I was trying to get an individual who had the ability to make things move faster, as far as the payments of money.

Mr. WRIGHT. The headlines in the paper—

Mr. WEBB. Well, let me explain that. Nearby my hometown there is a woman who has been fighting over what she desires in the way of, say, \$13,000 or \$14,000 for her home and the State is only willing to pay 12.

Nothing is done until the very last minute, and then the State comes in and pays, moves the house, in a matter of days, and she has no place to go.

It is things like that that say, "Well, protect yourself by obtaining adequate counsel," and that was the original intention.

Mr. WRIGHT. You had it in your mind that there was on the part of the State, a dual standard, that for those who are properly represented, you could get quick settlement; that for others, poorly represented, or not represented by other than themselves, the thing might drag on interminably and they would never get satisfactory action by the State. Is that what was in your mind?

Mr. WEBB. Either a counsel who was unfamiliar with the processes of working land—

Mr. WRIGHT. This may or may not be a little far from the field of my line of questioning.

If, in fact, there is a dual standard of treatment by a State or by an agency of the Federal Government, whereby people represented by high-powered lawyers get quick action and others get the run-around, then this, in itself, is wrong.

Was it the reputation of the State that this was the way things worked? Was that general talk?

Mr. WEBB. I don't think I recognized at the time that the Federal Government docked in 90 percent and the Commonwealth of Massachusetts had difficulty in paying bills at certain times.

Mr. WRIGHT. Did it seem to be a common feeling among business-men and others of your acquaintance that to cheat the Government, you are not cheating anybody?

Mr. WEBB. I think I will have to answer that a different way:

On my last visit with Mr. O'Connell, I stated to him that I was not going to pay a capital gains tax on the surplus, and I said to him, as the money went by me, that I sort of wished I had a piece of that because it's pretty sizable, but I guess I was satisfied with what I had originally made in the way of a trade, and that my conscience was clear.

Mr. WRIGHT. That you had only received \$30,000?

Mr. WEBB. That is correct. I felt that was a fair and equitable price——

Mr. WRIGHT. Now, let's put it in a slightly different context, and assume that the party who, by fraudulent representation of these appraisers, was paying out \$60,000 for a \$20,000 or \$30,000 piece of property was not the Government.

First, let's assume that that party was an individual.

Would there be a different ethical standard involved in the general public's mind or in the minds of those people whom you know?

In other words, you would not have engaged even passively in a conspiracy to defraud a third party, a private individual, would you?

Mr. WEBB. If I had been asked to sign a piece of paper, stating all the particulars of this land that was involved, state the property, the buildings that were on the property, and what I had paid for it, what I had done in the way of improvements, what I was going to lose in the way of a business operation at that particular point, and that I felt that I desired a certain price, and I had to sign my name at the bottom of that piece of paper, saying "I certify that the above is the truth," I would not be involved.

Mr. WRIGHT. I am not thinking exactly in terms of the procedure that would be followed to avoid personal involvement.

I am thinking instead of the attitude in the public mind toward taking an unfair advantage of a private party, as opposed to the attitude in the public mind to taking the same unfair advantage of the Government, of a public body.

Is this a part of what goes on in the mind of an individual?

Does a person think at some point that "it is not as though we are cheating somebody; it is the Government"?

Would you say that this is a part of the justification that a person might build up in his mind?

Mr. WEBB. It is like a trough. I mean, when you have a bunch of animals that go to the trough and it is there, the ones that are there first, they are going to get and fat and healthy and the rest go by the wayside.

Mr. WRIGHT. And do you find this to be a fairly prevalent public attitude toward the Government and toward public bodies and public programs, that this is a trough and "if we get there first we can get our share or a little more"?

Mr. WEBB. Unfortunate as it may sound, I can agree with you, because innumerable numbers of people knew of my particular part in this phase and what was going on, and not one of them said. "Back up: stop before you get too involved."

In other words, I kept certain people, I felt who are important to know what I was doing, informed exactly.

Mr. WRIGHT. Well, I want to thank you for your frankness in answering the questions that I have propounded.

Mr. GRAY. Mr. Chairman?

Mr. CRAMER. Mr. Chairman?

Mr. JONES. Mr. Cramer.

Mr. CRAMER. Well, I, too, find it to be a very frank statement and a rather revealing admission, that this is, in your opinion, the general attitude, to get what you can from the Federal Government because, after all, they have got an awful lot there and it really does not matter as it is paid for. But how did it get there but for the taxpayers?

Those are some of the problems we have with regard to this whole system.

Now, at the time you participated in destroying these papers who were you trying to hide them from? What was your thought there?

Mr. WEBB. This occurred subsequent to the money being paid to the Damort Land Corp. I believe there were indications through the newspapers that there—well, there was an investigation going on at that time.

Mr. Lawton called me from his office in Pawtucket, and asked if he could visit with me in my office.

Mr. Lawton and Mr. Myette did come to my office and, in a private room, he suggested that—

Mr. CRAMER. Who? Lawton suggested it—

Mr. WEBB. Yes.

Mr. CRAMER. Or Myette?

Mr. WEBB. Lawton. Lawton suggested that, in view of references to the price that I had desired in the past or figures that referred to somewhere between \$20,000 and, say, \$30,000, that they might well be destroyed, obviously, to—this is obvious—to protect his appraisal of the value of the land at \$60,000 which he had done earlier in the year.

Mr. CRAMER. So your thought and reason at the time, in destroying the papers evidencing a value less than the \$60,000, was Lawton's interest. He suggested that because he had appraised it at \$60,000—

Mr. WEBB. No.

Mr. CRAMER. It would be damaging to have evidence of record?

Mr. WEBB. No; I think that was understood and it was done primarily to protect his position.

Mr. CRAMER. To cover a fraudulent, obviously fraudulent, appraisal. Right?

Mr. WEBB. I don't know that, sir.

Mr. CRAMER. Well, the appraisal—it was the appraisal based upon which you got three times as much for the property as you initially asked?

Mr. WEBB. No; I asked \$30,000.

Mr. CRAMER. Initially, when you had it up with Lawton for sale, you were asking \$21,500?

Mr. WEBB. That is 3 years—

Mr. CRAMER. That is right.

Mr. WEBB. That is 2 years, 2 years prior; yes, sir.

Mr. CRAMER. Now, so you only ended up with twice as much as you expected—\$60,000 instead of \$30,000.

That is, that was the price paid for the property? You were asking \$30,000 and \$60,000 was paid for it by the Government?

MR. WEBB. That's right.

MR. CRAMER. Now, did you have any other thoughts at this time?

Were you trying to protect yourself? This thing had turned sour by now; had it not? The investigations were underway?

MR. WEBB. No; the investigations had not been—at the time of the destruction?

MR. CRAMER. Yes; the destruction of the papers. You said you read in the paper where investigations were underway.

MR. WEBB. As far as I was concerned, I had nothing to hide.

MR. CRAMER. Well, you did not smell anything fishy or think there was anything wrong with this whole thing, even up to the time that you destroyed the papers, so far as your participation was concerned?

MR. SCHWENGEL. Will the gentleman yield?

MR. CRAMER. Let him answer my question and I will be glad to yield.

MR. WEBB. As I stated prior, a short time ago, I said the only—the time that it became evident to me was at the time that Mr. Harney called me on the phone and said the price was \$42,500.

MR. CRAMER. That was long before you—long before you had this—

MR. WEBB. Yes, sir.

MR. CRAMER. Tearing-up ceremony?

MR. WEBB. Yes, sir.

MR. CRAMER. So at the time you tore up the papers you did know that you had participated in something that was wrong?

MR. WEBB. I don't think that was my attitude at that particular moment.

MR. CRAMER. Well, you have to either answer the question in the way you did to the gentleman from Texas—you realized something was wrong when you had this offer made even long before you settled, let alone before you tore up the papers or you are going to have to rest with the answer you just gave me. Now, which is it?

MR. WEBB. Well, you are getting me involved with the personal situation, where I had these gentlemen managing this property for a period of 3 years.

And, therefore, I felt some personal obligation to them at that particular time.

MR. CRAMER. And you are saying that even though you answered the question of the gentleman from Texas, that even long before you settled and got the check that you knew something was wrong, you are now changing that statement. Is that right?

MR. WEBB. No; I admit what I did was wrong.

MR. CRAMER. And you admit that you knew it was wrong at the time you tore up the papers?

MR. WEBB. I don't think I recognized it at that time. I think that I let my personal relationship with C. H. Lawton Co. and Mr. Myette override what I considered to be poor judgment subsequent to that.

MR. CRAMER. Well, you did not mind being a party then to protecting Mr. Lawton, however?

MR. WEBB. No; I didn't.

MR. CRAMER. I will yield to the gentleman.

MR. JONES. Mr. Schwengel.

Mr. SCHWENGEL. That is the point I wanted to develop, and I am glad to have it in the record.

First, I want to say this, Mr. Chairman, that I think counsel has done a great job of bringing the facts we have gotten so far to light.

I am glad we are in the middle of this, and I certainly hope we can continue and pursue this until we have all the scoundrels and a complete investigation of the Massachusetts Interstate System as well as other charges that have been exposed.

Now, I want to go back to questioning you, sir, and I make reference, first, to your statement about what was going on in these transactions.

I suppose they knew about your deal, but they also knew about other deals around there that were being made?

Mr. WEBB. No; I didn't imply that, sir.

Mr. SCHWENGEL. What did you mean when you said there were many people who knew about this and knew what was going on and you were keeping them informed?

Mr. WEBB. Certain business associates and business relatives.

Mr. SCHWENGEL. Who are those people?

Did they also have property involved here?

Mr. WEBB. No, sir. No. These would be——

Mr. SCHWENGEL. Do you mind naming who those people were?

Mr. WEBB. These were people who were close to me; my brother, who happens to be involved in the same business as I am, as far as the user of the property at one time, and certainly, secretaries, et cetera, and individuals whom you might call your bosses in your own company.

Mr. SCHWENGEL. As a businessman, being in business and having a company, you have a lawyer?

Mr. WEBB. No, sir; I don't.

Mr. SCHWENGEL. You have no lawyer? Did you ever talk to anyone about this or seek counsel of any kind?

Mr. WEBB. Never—in this——

Mr. SCHWENGEL. In this deal.

Mr. WEBB. With respect to this?

Mr. SCHWENGEL. Yes.

Mr. WEBB. No, sir.

Mr. SCHWENGEL. Have you since that time?

Mr. WEBB. No, sir.

Mr. SCHWENGEL. Do we have in the record who participated in destroying the records and what records were destroyed?

Mr. MAY. Yes.

Mr. JONES. We do not have the records that were destroyed.

Mr. SCHWENGEL. Well, I mean a statement as to which ones were——

Mr. JONES. Yes.

Mr. CRAMER. I want a few more questions.

Mr. JONES. Yes.

Mr. CRAMER. Now, you agreed to hire this attorney. You never did have an agreement with him as to exactly how much his fee was going to be.

You never even got a statement from him at the time you received your check from him, did you?

You were just handed the check and that was it. No statement as to where the rest of the money went or anything?

Mr. WEBB. This is the check that he paid me with——

Mr. CRAMER. Right.

Mr. WEBB. To close out the——

Mr. CRAMER. That is right; the \$17,000 and something.

Mr. WEBB. No. I requested by letter a bill, stating that he—I wrote a letter to Mr. O'Connell, requesting that he submit a bill for legal fees and expenses.

Mr. ROBISON. Did you get that?

Mr. WEBB. I never received a reply to it.

Mr. CRAMER. So he submitted a bill to you indicating that—you wrote a letter to him on April 13, 1960, stating:

DEAR JIM: May I have a bill, invoice, or letter stating "for services rendered," et cetera?

Very truly yours,

WALTER M. WEBB.

Is that right?

Mr. WEBB. Yes, sir.

Mr. CRAMER. Did you get a bill, in fact?

Mr. WEBB. No, sir.

Mr. CRAMER. Did you get a statement back?

Mr. WEBB. No, sir.

Mr. CRAMER. Did you get a letter back?

Mr. WEBB. No, sir.

Mr. CRAMER. Did you not think this was kind of funny—an attorney that you just paid \$30,000 to would not even acknowledge your letter asking for a statement?

It was kind of a fishy way to do business, was it not? That is a pretty substantial fee.

Mr. WEBB. That is right.

Mr. CRAMER. Now, I notice in your letter of December 20, 1959, some 5 months earlier than this letter that has been introduced as exhibit 10, in addressing it to James O'Connell, you indicated that O'Connell was a stranger to you, right, until you met him in this——

Mr. WEBB. Yes.

Mr. CRAMER. Did you get to know him pretty well during this time?

Mr. WEBB. Not personally; no.

Mr. CRAMER. Well, in your letter you say "I hope the vacation revived your bounce, and you carry my urgent request to its proper conclusion," meaning the request that this matter be settled up, indicating to me at least you must have known him fairly well.

What do you mean his "bounce"? Was he a bouncy sort of fellow?

Mr. WEBB. His office is so handy to mine that I knew that he was away on vacation, and it seems to me that he had indicated that he needed to get away—he had told me that he needed to get away because of this activity—tired him out.

Mr. CRAMER. So you did discuss with him his personal feelings——

Mr. WEBB. Yes.

Mr. CRAMER. That he was tired and that he had a lot of activity?

Mr. WEBB. Yes.

Mr. CRAMER. Well, I think the record shows that pretty clearly. He had a lot of activity.

But what influence do you think O'Connell had? What indication did you get from O'Connell or anyone else, as to influence that O'Connell or anyone else involved in this had that could up the price of your property from what you thought was the value, \$30,000 to \$60,000?

Mr. WEBB. I haven't the slightest idea.

Mr. CRAMER. You have no ideas as to what influence Mr. Harney or Mr. O'Connell might have had in the department that would have had the effect of doubling what you thought was the value of your property?

Mr. WEBB. I have never had any idea how they obtained the inflated value.

Mr. WRIGHT. Will the gentleman yield?

Mr. CRAMER. Harney indicated to you, did he not, that he, himself, secured the appraisers; he had the appraisers come in to set this thing up?

Mr. WEBB. Well, he stated the facts; that's all. I don't know how he got them.

Mr. CRAMER. And you saw nothing unusual or thought nothing unusual was going on when a man, working for the State, namely, Harney, helped you engage an attorney to represent your interests, which were adverse to the State, and even suggested and said he got the appraisers and had them fix the price, and that they were then going to get Lawton to fix the price?

You did not think there was any conflict of interest here or any question?

Mr. WEBB. Oh, yes, sir; I did. I knew there was conflict of interest.

Mr. CRAMER. Well, why did you participate in it then?

Mr. WEBB. I have already tried to answer Mr. Wright's question. I said I asked that question too many times now and I haven't got the right answer yet.

Mr. CRAMER. Well, that could be part of the answer why you wanted to tear up the papers, too, could it not?

Mr. WEBB. No, sir; that had nothing to do with it.

Mr. ROBISON. Mr. Chairman?

Mr. JONES. Mr. Gray.

Mr. GRAY. Mr. Webb, it has been pretty thoroughly covered, but there is one aspect of this questioning that I want to go into.

That is when Messrs. Harney and O'Connell met in O'Connell's office with you for a final settlement, at any time during this conference did Mr. O'Connell ask you to accompany him to a bank and cash this check?

Mr. WEBB. No; he didn't.

Mr. GRAY. He did not. Did he indicate to you at any time how the division of the \$30,000 was going to be made?

Mr. WEBB. Never.

Mr. GRAY. At no time?

Mr. WEBB. No, sir.

Mr. GRAY. Did you have any opinions on the subject?

Mr. WEBB. No, sir.

Mr. GRAY. In the numerous conferences that you held you had no idea of how this might have been split?

Mr. WEBB. I don't think so.

MR. GRAY. He never, at any time, said, "This check is made out to you for \$47,000 plus and will you take it and cash it" or "will you go with us so it can be cashed"? He only asked you to endorse it. Is that it?

MR. WEBB. Oh, I don't think he wanted me to deposit the check or take the check out of his presence.

MR. GRAY. At no time he indicated he wanted you to cash it and bring him \$30,000 cash back?

MR. WEBB. No, sir.

MR. GRAY. And you have no opinion at all as to how you think this \$30,000 was divided among the principals involved in this?

MR. WEBB. No; I have no opinion.

MR. GRAY. And after meeting with these people and knowing who was involved you had no idea who was going to get the major portion of it?

MR. SCHWENGEL. Will the gentleman yield?

I wanted to raise the point, Mr. Gray, that Mr. Webb said at one point that he observed Mr. Harney in the presence of Mr. O'Connell; that he supposed this would be divided with other people and there was a tacit agreement that this was true.

MR. WEBB. That is——

MR. SCHWENGEL. Or an understanding.

MR. WEBB. Yes, sir.

MR. GRAY. There is no understanding as to who these other people were. Is that it?

MR. SCHWENGEL. Picking up from there, if the gentleman will yield further, I would like to ask if you have any other ideas as to who these other people might be?

MR. WEBB. I haven't the slightest idea.

MR. SCHWENGEL. In your transactions, dealing with Harney and O'Connell, was the question of the Boston Club ever brought up or did you know about the Boston Club or ever hear about the Boston Club in connection with this?

MR. WEBB. Oh, I know the Boston Club; yes.

MR. SCHWENGEL. Do you know about the Boston Club?

MR. WEBB. Yes, sir.

MR. SCHWENGEL. Were these people associates or members of the Boston Club; if you know?

MR. WEBB. Most——

MR. SCHWENGEL. That is, O'Connell and Harney?

MR. WEBB. Most politicians are.

MR. SCHWENGEL. Most politicians are. And when you say "most politicians" I suppose you mean both Democrats and Republicans?

MR. WEBB. I would guess so.

MR. SCHWENGEL. In your opinion, what were the reasons and excuses for organizing the Boston Club or what were its objectives?

MR. WEBB. I have no idea. It was a nightclub prior to being a Boston Club.

MR. SCHWENGEL. And do you know other people besides these people who belong to the Boston Club?

MR. WEBB. I don't know what—I don't know what reference, other than the luncheon date that I heard mentioned—but the Boston Club at one time was supposedly the place for politicians, because it is

within three blocks of the statehouse, and so they naturally tended that way. It is not that way now, today.

Mr. SCHWENGEL. Since we have started investigations there the Boston Club has disbanded. Is that right?

Mr. WEBB. I don't know that, sir.

Mr. SCHWENGEL. And you said you received no bill from Mr. O'Connell. I wondered if you received a bill from Mr. Lawton?

Mr. WEBB. Yes, I did. That is one of the papers that was destroyed.

Mr. JONES. Any further questions? Mr. Gray?

Mr. GRAY. Just one quick question. The statement, Mr. Webb, that you made in the office, and you admitted that he dropped by your office, knowing the calls and the contacts being made, did you have any idea of how much in expenses Mr. O'Connell was out in receiving this \$30,000 fee?

Did you have any idea what his expenses were? To your knowledge he had been working on the case. Did he make any trips?

Mr. WEBB. Negligible. I would say his expenses involved in this were negligible.

Mr. GRAY. That is all, Mr. Chairman. I think a lot of these answers can be developed when Mr. O'Connell gets here.

Mr. JONES. Now, are there any exhibits to be offered?

Mr. MAY. Yes, Mr. Chairman. Just one point before that: Did Mr. O'Connell have an appraisal made of your property for you, the property owner?

Mr. WEBB. No, sir.

Mr. MAY. Did you ever have an appraisal made for yourself?

Mr. WEBB. Yes, sir.

Mr. MAY. We have some exhibits here. I would suggest that they may be made 11-A through 11-G:

The check for \$47,383.37, dated March 31, 1960, payable from the Commonwealth of Massachusetts to the Damort Land Corp.

Another check from the Commonwealth to the Rhode Island Hospital Trust Co., same date, March 31, 1960, in the amount of \$12,269.97. That represents the payment for Damort's mortgage.

And a check from the Commonwealth to the city of Attleboro, of March 31, 1960, for \$558.69. That represents a payment for taxes.

Also a check dated April 21, 1960, to C. H. Lawton & Son for \$1,500, signed "Walter M. Webb."

Also Mr. Webb's check stub, No. 7, dated April 21, 1960, C. H. Lawton & Son, for real estate commission.

A statement from C. H. Lawton & Son to Damort Land Corp., dated August 1, 1960, sale price of property, South Attleboro, \$1,000; commission, \$100.

That was for the remainder of the property left after the taking.

A letter of April 13, 1960, to James S. O'Connell from Walter M. Webb, asking Mr. O'Connell for a bill, invoice, or letter, for services rendered.

Mr. JONES. Without objection, they will be made a part of the record and will be noted as exhibit 11.

(The documents referred to were marked "Exhibits 11-A through 11-G," and will be found in the files of the subcommittee.)

Mr. JONES. If there is no objection, the Chair will excuse Mr. Webb from further testimony and, Mr. Webb, that means that you will not be required to come before the committee at any subsequent time unless you are subpoenaed by the committee.

And in behalf of the committee, I want to tell you that we are very grateful to you for appearing before the committee and giving the testimony that you have today.

The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 5:08 p.m., the hearing was recessed, to reconvene at 10 a.m., Wednesday, February 7, 1962.)

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

WEDNESDAY, FEBRUARY 7, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS,
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to adjournment, at 10:15 a.m., in room 1302, New House Office Building, Hon. John A. Blatnik (chairman of the special subcommittee) presiding.

Present: Representatives Blatnik, Baldwin, Bass, Clark, Cook, Cramer, Edmondson, Fallon, Gray, Jones, McVey, Robison, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. The Special Subcommittee on the Federal-Aid Highway Program will please come to order, resuming public hearings on the Massachusetts highway investigation.

We have an opening statement and comment by Chief Counsel Walter May.

Mr. MAY. Mr. Chairman, we were asked at the session yesterday to obtain information relative to certain indictments that were handed down recently in Massachusetts. We had learned from Mr. W. E. Garrity, Jr., U.S. attorney in Boston, Mass., that on February 5, 1962, a grand jury of the U.S. District Court, District of Massachusetts, indicted certain individuals and corporations for conspiracy to defraud the U.S. Government.

Named defendants were Joada Realty Corp.; Reiss Associates, Inc.; Mr. Ernest Reiss; Mr. Fred B. Dole; Mr. William M. Jacobs; Mr. Elton Stephen; Mr. Edward A. De Simone.

Also named as coconspirators, but not defendants, were Mr. Herbert L. Dodge and Mr. James L. Alphen.

I will identify the individuals mentioned in this fashion: Mr. Ernest Reiss was the principal of both the Joada Realty Corp. and Reiss Associates, Inc. These firms are located in Lowell, Mass.

Mr. Fred B. Dole is and has been an associate commissioner of the Department of Public Works of Massachusetts for several years.

Mr. William M. Jacobs is a fee appraiser, who has done fee appraisal work for the department of public works.

Mr. Elton Stephen is an employee of the department of public works, and Mr. Edward A. De Simone is another fee appraiser who has done fee appraisal work for the department of public works.

Mr. Herbert L. Dodge, named as a coconspirator, is an employee of the department of public works and was for a period assistant right-of-way engineer and then acting right-of-way engineer and recently right-of-way engineer.

Mr. James Alphen was a fee appraiser, who has done work for the department and is now deceased.

Mr. CRAMER. Mr. Chairman, may I ask a question of counsel? These indictments are the information I requested yesterday and I thank the counsel for it. Have these persons been subpoenaed to appear before this committee?

Mr. MAY. Mr. Congressman, this committee did inquire into the *Joada* case, and we had subpoenaed all of these individuals prior to the return of the indictments, except Mr. Elton Stephen, who, at the time we were serving our subpoenas, was just recovering from a heart attack, and so we withheld the subpoena at that time; and, of course, Mr. Alphen, who is dead. The rest of the individuals have been subpoenaed.

Mr. CRAMER. I, of course, am hoping that these parties will be able to testify before the committee. I expressed myself before, and I do think it is quite coincidental that these indictments come down on the very first day of our hearings. However, of course, I would be the first to suggest, and I have suggested in the past, that the department of justice should go forward with the grand jury proceedings which had been underway for better than a year. I am glad to see they are finally bringing it to a head in the form of an indictment.

But it is interesting it coincides with the first day of our hearings. I am glad our hearings were not put off for another 6 months, because possibly the indictments would have been too.

Mr. BLATNIK. The record should show that the indictments and the opening of the hearings also coincide with the alinement of five stars and the sun and the moon, and it is very likely celestial influences had something to do with it.

Mr. CRAMER. I wouldn't lay that much lack of diligence on the part of persons relating to indictments, because that celestial phenomenon only happens every hundred years or so, I think.

Mr. WRIGHT. Mr. Chairman, regular order, please.

Mr. BLATNIK. All right. Mr. May.

Mr. MAY. I think that the record should also show that this particular grand jury expires March 15 of this year, and the records show it has been extended three times.

The record should also show that indictments were returned in connection with the road program as far back as August of this past year.

Mr. CRAMER. At this point I would like, since the chairman has taken the position he has, to inquire as to whether or not the gentleman who knows the circumstances surrounding these matters and other facts that I think are important to be brought out to this committee, Mr. Elliot Richardson, is going to be called as a witness?

Mr. BLATNIK. We certainly will. The Chair has always felt that way. The attorney general too, at the very beginning some time ago, announced and has written that he would be more than willing to ap-

pear at any time that is convenient for the committee, except for a period of 10 days when he will be out of the country.

Mr. CRAMER. Mr. Elliot Richardson is whom I am talking about. He is the former U.S. district attorney and was for a long period of time, when this grand jury was sitting and this matter was under investigation—a matter which I directed to the chairman in writing as to whether or not he would be called as a witness.

Mr. BLATNIK. As I personally told the gentleman from Florida, we will be pleased to hand you the information at the proper time as the facts appear. The important thing regarding the consideration of calling the witnesses is the nature of the testimony, and that it be presented smoothly and that we have the flow of testimony as continuous as possible, in order to unfold a full and complete story. At the proper time, when it is propitious, and if Elliot Richardson will be of help, we will be more than pleased to have him as a witness.

Mr. CRAMER. I trust so, because I think he can shed considerable light on a lot of circumstances before this committee.

Mr. MAY. Mr. Chairman, I would like to ask some questions of our staff member, Mr. George Kopecky.

Mr. Kopecky, as a result of our investigation you drew up a certain chronology of facts with respect to the Damort Realty property that was discussed yesterday, did you not?

Mr. KOPECKY. Yes; that is right.

Mr. MAY. For the record, would you read that chronology, please?

Mr. KOPECKY. Yes. Our investigation has shown these facts: That this particular parcel of property was part of layout 4877, and that layout was dated July 28, 1959. It was properly filed. The layout was filed on August 10, 1959. The date of entry by the State, that is, the date of entry to the property, was August 11, 1959.

On September 9, 1959, Mr. R. E. Potter, the project leader, prepared the original E-28, which is a form that sets the process in motion. It was approved on that date by Mr. J. M. Thompson.

In September 1959, Mr. Frank Harney was assigned to the Fall River area.

On October 12, 1959, the fee appraiser cards were prepared from this form E-28.

On November 4, 1959, the final letters assigning the fee appraisers were prepared.

December 7, 1959—this was the date of Mr. Ernest Collins' appraisal in the amount of \$65,000. It was also the date of Joseph Schwartz' appraisal in the amount of \$67,000.

December 18, 1959, Mr. Errol Hopkins appraised this in the amount of \$54,000, and it was approved by Elton Stephen.

January 21, 1960, the review board requested that another appraisal be made. On January 29, 1960, by letter, Mr. Charles H. Lawton, Jr., was assigned to make this additional appraisal.

February 13, 1960—this was the date of Mr. Lawton's appraisal in the amount of \$60,000.

Then, on February 26, 1960, the review board established the figure of \$60,000.

Mr. MAY. Thank you, Mr. Kopecky. We have already had testimony that that case was settled for \$60,000.

Mr. Chairman, this was an interesting project, Interstate Highway 95. As you know, the Federal Government's share in such cases is 90 percent.

Mr. Kopecky, what do the files of the department of public works show with respect to the settlement of the *Damort Land Corp.* case?

Mr. KOPECKY. The State files contain a negotiation data sheet which bears the words, "Case settled by" and next to these words is written the name "Arlen Mooney, February 29, 1960, \$60,000." Above Mr. Mooney's name is written the name "Frank L. Harney, Jr."

Mr. MAY. Thank you, Mr. Kopecky.

That is an interesting item, Mr. Chairman. Mr. Harney's name is written above Mr. Mooney's name, indicating that either he or Mr. Mooney settled this case.

When we realize that Mr. Harney was at that time functioning not as a negotiator, but as a preliminary interviewer, that might cause us some wonderment. Also, we have heard that Mr. Harney had been transferred from the Attleboro area to the Fall River area in September 1959.

Mr. Chairman, we have a series of affidavits on this matter. May I have Mr. Constandy read them into the record?

Mr. BLATNIK. Proceed, please, Mr. Constandy.

Mr. CONSTANDY. This is an affidavit in the Commonwealth of Massachusetts, county of Suffolk:

Robert E. Potter, being duly sworn, deposes and says:

"I reside at 617 King Street, Hanover, Mass.

"I have been employed by the Department of Public Works of the Commonwealth of Massachusetts since 1952 and am presently an engineer in the right-of-way section of the department.

"In 1957 and 1958 I was a project leader in charge of the preliminary work concerning the construction of Route 95, also known as FAPI-95-1(2)0, located in Attleboro, Mass. As project leader I directed and supervised the work of about six men, including Frank Harney, who called on property owners and advised them of the eminent domain takings, obtained descriptions of the properties, and gathered other pertinent preliminary information. It was not Harney's duty as a preliminary interviewer to discuss or negotiate settlements with property owners.

"In the late fall or early winter of 1958 while I was working late in a department field office for the Attleboro area, Harney entered the office, in the company of Orlando Spagnoletti, another department employee.

"At this time Spagnoletti was assigned to the right-of-way section in the main office of the department in Boston. To my knowledge, Spagnoletti should not have been in the Attleboro area, as I had not received any word from my superior or the main office in Boston that Spagnoletti had been assigned to do work on the Attleboro project. It is not, and was not, the practice of the main office to assign an employee to a project without first notifying his new superior. I therefore asked Harney and Spagnoletti what they were doing, and both replied that they were looking over the Attleboro project. Spagnoletti or Harney, in substance, said they had 'driven around the job.'

"I have made this affidavit willingly and voluntarily at the request of James J. Fitzpatrick, associate counsel to the Special Subcommittee on the Federal-Aid Highway Program, House of Representatives, Washington, D.C.

"(S) ROBERT E. POTTER."

Subscribed and sworn to before a notary public the 18th day of December 1961.

I have an affidavit of Mr. Arlen Mooney, which reads as follows:

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk:

Arlen Mooney, being duly sworn, deposes and says:

"I reside at 17 Brett Street, Brockton, Mass.

"I was employed by the Department of Public Works, Commonwealth of Massachusetts, from January 1958 to July 1961 and worked as a negotiator in connection with land taking made by the Commonwealth.

"In early 1960 I was working as a negotiator in the Attleboro area. One of the cases assigned to me, to negotiate a settlement for damages, was in connection with the taking of property owned by the Damort Land Corp. I could not negotiate this settlement, and I did nothing in connection with the matter because no authorized settlement amount or figure had been fixed by the department.

"Shortly before February 23, 1960, I took leave from my job to get married. Prior to going on leave, I delivered the file in connection with the Damort Land Corp. to Charles Fitch, another negotiator. He was to negotiate the settlement after an authorized settlement figure had been set.

"Shortly after my return, and in the spring of 1960, my superior, Jack Thompson, exhibited to me the Damort Land Corp. file and asked if I had settled the case. I told him that I had not negotiated nor settled it, whereupon he pointed out to me the signature 'Arlen Mooney' on the negotiation data sheet in the department's appraisal report above the signature 'Frank Harney.' I immediately told Mr. Thompson that neither signature was written by me. Thompson then, in substance, said to me, 'If this matter should be questioned, at least I know where you were.'

"I had not, at any time, discussed the negotiation or settlement of this case with Frank Harney.

"I have made this affidavit willingly and voluntarily at the request of James J. Fitzpatrick, who identified himself as being an associate counsel to the Special Subcommittee on the Federal-Aid Highway Program, House of Representatives, Washington, D.C."

Subscribed and sworn to before a notary public.

The third affidavit, Mr. Chairman, is that of Charles G. Fitch, which reads as follows:

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk:

Charles G. Fitch, being duly sworn, deposes and says:

"I reside at 1 Grant Avenue, Wellesley, Mass.

"I have been employed by the department of public works, Commonwealth of Massachusetts, since 1953 as a negotiator of land damage cases in the right-of-way section of the department.

"In January of 1960 I was assigned by the department of public works to do negotiating work in the Attleboro area.

"Shortly before February 23, 1960, Arlen Mooney, another department of public works negotiator, turned over to me about 20 to 25 cases in the Attleboro area which had been assigned to him to negotiate land damage settlements.

"To my knowledge I did not negotiate the land damage settlement with the Damort Land Corp. This case was settled in the Boston office of the department of public works, although it was unusual that this should be done before negotiations were conducted in the field.

"I have made this affidavit willingly and voluntarily at the request of James J. Fitzpatrick who identified himself as being an associate counsel to the Special Subcommittee on the Federal Aid Highway Program, House of Representatives, Washington, D.C."

This is subscribed and sworn to before a notary public.

Mr. MAY. Mr. Chairman, may we make those affidavits exhibit 12 A, B, and C?

Mr. BLATNIK. Without objection, it is so ordered.

(The documents referred to were marked for identification and received as "exhibit 12 A, B, and C" and are retained in subcommittee files.)

Mr. MAY. Mr. Chairman, I think that those affidavits shed some light on the manner in which this case has been settled. Certainly it was not settled in the usual or respected manner.

Mr. BLATNIK. Our first witness this morning is Mr. Charles H. Lawton, Jr., of Pawtucket, R.I.

Mr. Lawton, will you please take the witness chair? Mr. Lawton, will you please stand and take the oath? Will you raise your right hand? Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LAWTON. I do, sir.

Mr. BLATNIK. Be seated. Mr. Lawton, for the record, will you give your full name and home address, and occupation or profession?

TESTIMONY OF CHARLES H. LAWTON, JR., PAWTUCKET, R.I., HEAD OF C. H. LAWTON & SON; ACCOMPANIED BY HAROLD M. COLE, LAWYER, NEW YORK, N.Y.

Mr. LAWTON. My name is Charles H. Lawton, Jr. I live at 75 Dryden Avenue, Pawtucket, R.I.

Mr. BLATNIK. And your occupation or profession?

Mr. LAWTON. I am a real estate broker.

Mr. BLATNIK. You are accompanied by counsel. Counsel, will you please identify yourself for the record?

Mr. COLE. Yes, sir. My name is Harold M. Cole. I am senior partner in the firm of Cole, Friedman & Dietz, 30 Broad Street, New York City.

Mr. BLATNIK. New York City?

Mr. COLE. Yes, sir; New York City.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Chairman, Mr. Lawton and Frank L. Harney and James S. O'Connell were convicted in the U.S. District Court of Boston, Mass., on November 3, 1961, of conspiracy to defraud the U.S. Government. All three were sentenced to 1 year in prison and a \$5,000 fine. All three have appealed their cases. They were granted a stay of execution of sentence pending the decision on their appeal.

Mr. Harney and Mr. O'Connell did not testify during the trial. Neither did Mr. Lawton testify during the trial. Mr. Lawton is here today and he is going to testify fully at the hearing today.

This is most important to the committee. Certainly it is most important to Mr. Lawton. I would ask that questions from the members be withheld until Mr. Lawton and I have attempted to develop fully his testimony here this morning.

Mr. BLATNIK. The Chair concurs and asks the members of the committee to cooperate in this instance. This is very vital testimony and

we want to get it as fully as possible to have it continuous. A full opportunity will be given to all members for subsequent questions.

Mr. MAY. Mr. Lawton, what is your business?

Mr. LAWTON. Real estate insurance broker.

Mr. MAY. What is the name of the company?

Mr. LAWTON. C. H. Lawton & Son.

Mr. MAY. How long have you been in this type of business, Mr. Lawton?

Mr. LAWTON. Since 1920. Over 40 years.

Mr. MAY. Where is the business located?

Mr. LAWTON. 18 East Avenue, Pawtucket.

Mr. MAY. Mr. Lawton, we have already received testimony with respect to this matter. We have heard that your firm began to manage the Damort property at South Attleboro. Were you aware that your firm was engaged by the principals of Damort to do that type of work?

Mr. LAWTON. Yes. It didn't happen exactly that way. It was business that was solicited and brought in by Mr. Myette, who worked for the company at that time. It was his business. It was quite informal. It was not even listed formally. He solicited the business and whatever was done was by him to a great part. My connection was to be at arm's length.

Mr. MAY. That is Mr. Felix Myette. He was an employee of your firm?

Mr. LAWTON. He worked on a commission basis and had desk space in the office.

Mr. MAY. Mr. Myette did testify that he did solicit that business.

Mr. LAWTON. Yes, sir; he did.

Mr. MAY. And he was retained initially to sell the property, and eventually he was able to rent the property. Were you aware that he was doing these things?

Mr. LAWTON. Yes. As I remember the rental, for what the renter sought, we didn't seek to rent it.

Mr. MAY. But you were aware that the property was listed with your firm for sale?

Mr. LAWTON. Yes.

Mr. MAY. And you were also aware that your firm was serving as a rental manager?

Mr. LAWTON. Yes, sir.

Mr. MAY. We heard testimony from Mr. Myette yesterday concerning certain conversations he had with Mr. Harney. Mr. Myette testified that on one occasion he went to the Damort property with you, Mr. Lawton, where you met Mr. Harney. Will you tell us about that occasion?

Mr. LAWTON. As I remember it, Mr. Myette said that he was to meet Mr. Harney on the property. He wished to inspect it and look it over, and would I go along with him. We met Mr. Harney who, I understood, was—represented the State of Massachusetts.

There was a discussion about the property and he was asked if it was wise for an owner to engage counsel to represent him in land condemnation proceedings. He said that would be up to the owner to choose an attorney, if he so desired. He, however, recommended as an attorney Mr. O'Connell.

MR. MAY. Mr. Myette testified that Mr. Harney mentioned that Mr. O'Connell had certain connections—he had a brother in the Governor's office. Did Mr. Harney mention that to you?

MR. LAWTON. Yes, sir. As I remember, he did.

MR. MAY. Mr. Myette testified that thereafter he called Mr. Walter Webb, the owner of the Damort property, and he spoke with Mr. Webb, and Mr. Webb suggested that Mr. Myette go and see Mr. O'Connell and attempt to retain him for Mr. Webb. Did Mr. Myette relate the conversation he had with Mr. Webb to you?

MR. LAWTON. Yes, sir, he did.

MR. MAY. You decided to accompany Mr. Myette to see Mr. O'Connell?

MR. LAWTON. He asked me to do that.

MR. MAY. Mr. Myette asked you to go with him?

MR. LAWTON. Yes. Mr. Myette had not been in the real estate business long, and he asked me if I would go along with him.

MR. MAY. Did you?

MR. LAWTON. Yes, sir.

MR. MAY. When you arrived at Mr. O'Connell's office, who was there?

MR. LAWTON. As I remember, Mr. Harney was present, and then later Mr. O'Connell came in.

MR. MAY. Do you recall anything significant that Mr. Harney said to you before Mr. O'Connell arrived?

MR. LAWTON. I don't remember anything significant he said except passing the time of day and, "Did you have a pleasant ride up," and so forth.

MR. MAY. What took place when Mr. O'Connell arrived? Did Mr. Harney remain there at the meeting?

MR. LAWTON. As I remember, he did.

MR. MAY. So you and Mr. Myette and Mr. O'Connell and Mr. Harney sat in Mr. O'Connell's office and discussed the matter. Is that right?

MR. LAWTON. Yes.

MR. MAY. What happened?

MR. LAWTON. Well, Mr. O'Connell was asked if he could represent the Damort Land Corp., which was owned by Mr. Webb, in the land condemnation proceedings that were to take place on the land. And he asked the location of the land, and he was told about the land, and he said that he could.

MR. MAY. What did Mr. O'Connell want done?

MR. LAWTON. Mr. O'Connell, as I remember, asked that we have Mr. Webb write a letter first asking us to act as agent for him in the land condemnation proceedings.

MR. MAY. And, secondly, did Mr. O'Connell want something else from Mr. Webb.

MR. LAWTON. Do you mean any letter giving him authority to act as attorney for him?

MR. MAY. Yes.

MR. LAWTON. Yes.

MR. MAY. Do I understand that Mr. O'Connell wanted from Mr. Webb a letter, No. 1, appointing you, Mr. Lawton, and Mr. Myette, to act as his agents?

Mr. LAWTON. Yes. That is the way I remember it.

Mr. MAY. And, secondly, asking Mr. O'Connell to represent him in the land-taking matters?

Mr. LAWTON. Yes, sir.

Mr. MAY. How long did the meeting last?

Mr. LAWTON. Well, it was very short. I wouldn't think over 10 or 15 minutes, I wouldn't think, at most.

Mr. MAY. Were Mr. O'Connell and Mr. Harney talkative at the meeting?

Mr. LAWTON. No, they weren't very talkative. They just asked a few questions and asked for that information which was required. That is about all that was said, as I remember it.

Mr. MAY. Did anyone bring up the possible price of the land, or value of the property?

Mr. LAWTON. No.

Mr. MAY. And you and Mr. Myette left the office together?

Mr. LAWTON. Yes, sir.

Mr. MAY. Who remained behind?

Mr. LAWTON. I think Mr. Harney and Mr. O'Connell remained behind.

Mr. MAY. From that time for a period you had little to do with the matter?

Mr. LAWTON. What was that?

Mr. MAY. From that time on, after the meeting, for a certain period you had little to do with the matter? You yourself?

Mr. LAWTON. No, and at a later date, when Mr. Webb sent a letter to Mr. O'Connell and to us saying that we would have no part in any negotiations—from that period on he would handle all of the negotiations with Mr. O'Connell.

Mr. MAY. Mr. Webb told you and Mr. Myette that he, Mr. Webb, would handle it?

Mr. LAWTON. Yes, that is correct.

Mr. MAY. But did you play another part in this? Did you have another meeting with Mr. O'Connell?

Mr. LAWTON. There was a second meeting that we made. Mr. Myette and I went up to inquire whether any headway was being made in negotiations, and that may have been previous to the last case I have just referred to.

Mr. MAY. On this second meeting, about when did the second meeting take place, to the best of your recollection?

Mr. LAWTON. I can't remember exactly, but I would think it was probably sometime in August or the first of September, possibly.

Mr. MAY. Why did you and Mr. Myette go to see Mr. O'Connell?

Mr. LAWTON. Because Mr. Myette had tried to get him on the phone on many occasions and never was able to make contact. And Mr. Webb was calling Mr. Myette very often, I understand, to see what headway was being made; and at Mr. Myette's suggestion we made a trip up there to see if we could contact him.

Mr. MAY. When you got to Mr. O'Connell's office on that occasion, who was there?

Mr. LAWTON. I am not positive whether Mr. Harney was there or not. He may have been there. I think possibly he may have. I can't swear to that. I'm not absolutely positive.

Mr. MAY. Mr. Myette testified at length yesterday that when you and he went up to see Mr. O'Connell on the second occasion, Mr. Harney was there?

Mr. LAWTON. Then probably that is correct.

Mr. MAY. Mr. Harney sat in once again at the meeting?

Mr. LAWTON. Yes.

Mr. MAY. What was discussed at that meeting?

Mr. LAWTON. Well, there was not much discussed, or much accomplished. We asked Mr. O'Connell what headway was being made, and he said that he was working on the matter and that it took time, and he was doing his best; but that's about all that he could say. He was quite indefinite and we didn't learn any more, and we didn't know any more when we left than when we arrived.

Mr. MAY. Was the matter of fee, attorney's fee, discussed at either of these meetings?

Mr. LAWTON. No, sir.

Mr. MAY. In the second meeting you wanted to know how things were going along, in essence?

Mr. LAWTON. Yes.

Mr. MAY. And Mr. O'Connell in essence said things were progressing, but these matters take time?

Mr. LAWTON. Yes, sir; that is the fact.

Mr. MAY. You and Mr. Myette left the office?

Mr. LAWTON. Yes.

Mr. MAY. Who remained behind?

Mr. LAWTON. Well, if Mr. Harney was there he remained behind.

Mr. MAY. You yourself have no recollection of Mr. Harney being there the second time?

Mr. LAWTON. It is not too clear—it is not too clear.

Mr. MAY. Let me ask you this: Have you ever met Mr. O'Connell at any time when Mr. Harney was not present? Do you recall that?

Mr. LAWTON. No, I can't recall that. I think probably he was present both times.

Mr. MAY. There came a time when you received a telephone call in relation to the land-taking matter?

Mr. LAWTON. I had a call from Mr. Harney, as I remember it, in December, asking if I could make appraisals for the State at any time.

Mr. MAY. Was it in December?

Mr. LAWTON. As I remember, there was a first call that asked me if I could make appraisals.

Mr. MAY. Did that take place in December?

Mr. LAWTON. It may have been December or early January. I don't remember exactly.

Mr. MAY. All right. Sometime in December or early January you received a telephone call from Mr. Harney.

Mr. LAWTON. Yes.

Mr. MAY. Would you relate to the committee in essence what was said during that telephone conversation? What did Mr. Harney say?

Mr. LAWTON. Well, as I remember it, he called twice. On one he asked me if—

Mr. MAY. The first time?

Mr. LAWTON. He asked if I would be able to make any appraisals for the State, and I explained to him that I had never appraised for the State and I had never done any State work. He said, "If anyone

were needed to appraise property in your area when it was found needed to have—when it was necessary to have someone who understood the area, would you be able to make appraisals?"

I said, "I have to consider at the time and see whether I was busy or available when the work had to be done."

MR. MAY. Did Mr. Harney ask you if you could make appraisals on a couple of properties?

MR. LAWTON. That is the way I remember it; yes.

MR. MAY. In essence, did he say, "Mr. Lawton, could you make a couple of appraisals in your area if it were needed?"

MR. LAWTON. Yes.

MR. MAY. Did he mention what the fees might be?

MR. LAWTON. I think he did; yes, sir.

MR. MAY. What would the fees be?

MR. LAWTON. \$500 per appraisal.

MR. MAY. \$500 apiece. And you told him that you could do this work, and would do this work?

MR. LAWTON. I said I would have to see how my time was at the time that it might be required.

MR. MAY. Did Mr. Harney on that occasion mention any specific properties?

MR. LAWTON. No; I don't think that he did.

MR. MAY. Mr. Chairman, as we have already seen from the chronology, on January 21, 1960, the matter of Damort property went to the review board for the first time. They had at that time the appraisal from Mr. Hopkins of \$54,000, Mr. Collins of \$65,000, and Mr. Schwartz of \$67,000. The review board set no figure at that time, but asked the department to obtain another fee appraisal.

Then, prior to the first submission of this—the first call took place before January 21?

MR. LAWTON. I would say so; yes, sir.

MR. MAY. So prior to the submission of the review board, Mr. Harney called Mr. Lawton to see if he could do a couple of appraisals in his area. You indicated that you could and probably would. Is that right, Mr. Lawton?

MR. LAWTON. If it was at a time when I could work it in.

MR. MAY. All right. So it went in to the review board January 21. Did you receive another telephone call from Mr. Harney subsequent to January 21, Mr. Lawton?

MR. LAWTON. Yes.

MR. MAY. What did Mr. Harney say on that occasion?

MR. LAWTON. He asked if I would be able to make appraisals of the Damort Land property and the Charpentier property across the way.

MR. MAY. C-h-a-r-p-e-n-t-i-e-r?

MR. LAWTON. Yes.

MR. MAY. That is a nearby piece of property?

MR. LAWTON. Yes.

MR. MAY. So he asked you if you could do appraisals for Damort and Charpentier?

MR. LAWTON. Yes.

MR. MAY. What else did Mr. Harney say?

MR. LAWTON. I explained to him that I had never been on the Damort property, and, although I knew it at arm's length, I was

not too familiar with it, and I asked him how soon the appraisal would have to be done. And it was not too long a period. He stated that they wanted someone to make an appraisal who was familiar with the area and would know the property.

Mr. MAY. What else did Mr. Harney say?

Mr. LAWTON. He gave the range of the appraisal.

Mr. MAY. He told you that appraisals had already been made on this Damort property?

Mr. LAWTON. Yes; he said appraisals had been made; yes.

Mr. MAY. Did he say how many had been made?

Mr. LAWTON. I don't remember that he gave the numbers. I can't remember that.

Mr. MAY. Did he not say that three appraisals had been made on the Damort property?

Mr. LAWTON. I think he said three. Whether there were more, I don't know. I think he said three had been made.

Mr. MAY. Did he mention something about the range of the appraisals?

Mr. LAWTON. He mentioned the range; yes.

Mr. MAY. What did he say the range was?

Mr. LAWTON. Oh, he said the range was between, as I remember it, \$55,000 and \$67,000.

Mr. MAY. What else did he say? Did Mr. Harney tell you that he wanted another appraisal within that range?

Mr. LAWTON. He said that he wanted an appraisal, and I said any appraisal that I made would have to be according to my ideas of value. That I had never set foot on the property up to that time. I had never inspected it. I was not too familiar with it. I would have to study it. Whatever appraisal I made would have to be a correct appraisal, of my own opinion.

Mr. MAY. Did Mr. Harney say that he wanted another appraisal within the range of \$55,000 to \$67,000?

Mr. LAWTON. I don't remember that he did.

Mr. MAY. Did he ask you if yours would be within that range, in your present thinking?

Mr. LAWTON. If he asked that question my answer was, any appraisal of mine would be absolutely according to my own opinion.

Mr. MAY. Mr. Harney called and Mr. Harney told you that three appraisals had already been made of the Damort property, and that the range was \$55,000 to \$67,000?

Mr. LAWTON. Yes, sir.

Mr. MAY. Now, try to remember. Did Mr. Harney tell you he needed another appraisal within that range?

Mr. LAWTON. He asked me to make an appraisal of the property, and I don't remember that he said anything like that specifically. Whether he thought I would assume it, I don't know, but he did not mention it specifically.

Mr. MAY. When he mentioned the range, \$55,000 to \$67,000, did he say, "What do you think about that? Is that about right?"

Mr. LAWTON. I told him I couldn't give him any opinion. Whatever he may have said I don't remember.

Mr. MAY. You don't remember what he said when he mentioned the range?

Mr. LAWTON. I don't remember that, no.

Mr. MAY. When you got through talking with him, did he ask you if you would do it?

Mr. LAWTON. He asked me if I would be able to make an appraisal within a certain period of time, and I said that was short, but I would. He said, "If you receive an appraisal from the State, can you make it?" I said, "Well, I will try to do it within the period allotted."

Mr. MAY. Did you indicate to Mr. Harney, when he mentioned the range of \$55,000 to \$67,000, something to the effect that, well, the value might be in that range, but you would have to take a look at it?

Mr. LAWTON. I couldn't make or give any opinion on it because I hadn't looked at the property except at arm's length. I would have to inspect it and look it over. I don't remember making any statement.

Mr. MAY. Mr. Lawton, this is a most important area.

Mr. LAWTON. Yes.

Mr. MAY. We have heard now for better than a day about the great effort to which Mr. Harney went in connection with this whole matter from the very beginning, in May 1959 through 1959, up through the departmental appraisal, and fee appraisal, and up to the review board. Now they have reached almost the climax where they are going to get some money. It depends on this next appraisal, and Mr. Harney calls not somebody in Massachusetts, but somebody in Rhode Island—somebody with whom he has already had contact—and he says these things about the Damort property. It is obvious that Mr. Harney had to be satisfied that you would come in with an appraisal within this range, or it is apparent you never would have gotten the appraisal, Mr. Lawton. So it is important that you remember as much as you possibly can about that conversation.

Mr. Harney called and said, "I have a couple of appraisals for you—Damort and Charpentier. On Damort we have already had three appraisals. They range from \$55,000 to \$67,000."

Mr. LAWTON. I have told you—

Mr. MAY. It would seem logical he would have something else to say. You can't remember?

Mr. LAWTON. No, sir. That's all that he said.

Mr. MAY. When the conversation terminated, did you expect to get the appraisals?

Mr. LAWTON. I wasn't sure. He said the appraisal might be sent from the State, and I didn't know that I was to do it, of course, until I received an application to so do from the State.

Mr. MAY. Mr. Chairman, we have here an original letter from the Commonwealth of Massachusetts, Department of Public Works. The letter is dated January 29, 1960. It was directed to Mr. Charles H. Lawton, care of C. H. Lawton & Son, 18 East Avenue, Pawtucket, R.I.

DEAR MR. LAWTON: You are hereby authorized to appraise the following takings for this department: City of Attleboro, layout No. 4877, filed 8-10-59, parcel 103, 103A, TS-106 and RT-101, Louise L. Charpentier.

Also parcel No. 105, 105A, 105B and TS-119, Damort Land Corp.

The letter continues:

Plans, an invoice in the amount of \$1,000 and additional information are enclosed.

Mr. Chairman, this is a form letter and I will read the rest of it.

You are to submit these appraisals directly to me and you are requested not to divulge your figures to anyone.

Each submitted copy must have on the front of the cover: Owner, town or city, parcels and your name.

The acceptance of this appraisal assignment constitutes an agreement to appear and testify in court, if so requested by the Commonwealth, for a fee of \$100 per day.

These appraisals are to be completed and returned to me on or before February 23, 1960. Failure to do so may result in this authorization being canceled.

If after receiving this appraisal assignment you do not feel you can meet the specifications of time, terms, etc., please return the same forthwith.

Yours very truly,

GEORGE C. TOUMPOURAS,
Associate Commissioner.

And included with this letter was an invoice from the department, Mr. Lawton, of \$1,000?

Mr. LAWTON. Yes, sir.

Mr. MAY. You received this letter?

Mr. LAWTON. Yes, sir.

Mr. MAY. Mr. Chairman, we note the fee is \$1,000. Yet back away, in perhaps late December or early January, Mr. Harney had pointed out the fees would be \$500 apiece. I would like to make that letter and attachments exhibit 13-A and 13-B.

Mr. WRIGHT. Mr. Chairman, what is the date of that letter?

Mr. MAY. January 29, 1960.

Mr. BLATNIK. Without objection, the exhibit will be so numbered. (The documents referred to were marked for identification and received as Exhibits 13-A and 13-B.)

Mr. MAY. Mr. Lawton, did you receive a second note shortly before you received this particular letter?

Mr. LAWTON. Yes, sir.

Mr. MAY. Would you say a few days, or a week?

Mr. LAWTON. Oh, maybe a week or so. Maybe a week or 10 days. I can't remember exactly.

Mr. MAY. By that time we have seen, Mr. Chairman, this case had been to the review board and another appraisal requested.

Mr. Lawton, after you received this letter, or before you received the letter, did you submit any qualifications to the Department of Public Works of Massachusetts?

Mr. LAWTON. I don't recall that I did.

Mr. MAY. You had never done work for the Department of Public Works of Massachusetts previously?

Mr. LAWTON. No, sir; no, sir.

Mr. MAY. You had never requested such work from the department, or of anybody?

Mr. LAWTON. No, sir.

Mr. MAY. You lived and worked in Rhode Island?

Mr. LAWTON. Yes, sir.

Mr. MAY. Did you receive from the department any instructions as to what they wanted done with respect to the appraisal itself? Did you receive any instructions as to the approaches you should make, or how you should do the appraisal, or how you should report it?

Mr. LAWTON. I don't remember that I did.

Mr. MAY. Did you?

Mr. LAWTON. I don't think so. Not to my memory.

Mr. MAY. You will recall Mr. Stevenson's testimony, of the Bureau of Public Roads, when this hearing began. Mr. Stevenson pointed out what the State of Massachusetts had told the Bureau with respect to its organization and operation. At that time Mr. Stevenson said the State stated that outside fee appraisers are engaged by an associate commissioner with a form letter used for this purpose, including a statement of information the department requires in appraisal reports. With respect to your appraisal of the Damort property, Mr. Lawton, what sort of appraisal work had you been doing prior to this?

Mr. LAWTON. My appraisals have all been from banks and private parties—industrial concerns, corporations—who are interested primarily in what my opinion of the value might be. I have been doing that for 40 years.

Mr. MAY. Now, that type of appraisal work might be a little bit different than the type expected in a program such as the Federal-aid program.

Mr. LAWTON. Yes, sir; that is probably true.

Mr. MAY. Your type of appraisal work was more a quick, less detailed appraisal job than might be expected by the department; is that true?

Mr. LAWTON. That is true. The banks that we have done business with for many years were not interested in voluminous reports or reasons, as much as my opinion of value. That is the way I had operated and been treated, and perhaps brought up all my life.

Mr. MAY. Yes. The banks and the mortgage companies would be more interested in your opinion as a real estate man living in the area?

Mr. LAWTON. Yes, sir.

Mr. MAY. A quick opinion as to the value of a particular property?

Mr. LAWTON. Yes, sir.

Mr. MAY. Have you in your experience represented owners in land condemnation cases?

Mr. LAWTON. Yes, sir; I have.

Mr. MAY. Property owners?

Mr. LAWTON. Yes, sir.

Mr. MAY. What has been your experience, Mr. Lawton?

Mr. LAWTON. Well, the majority—I have represented owners in the majority of cases where perhaps in their opinion and in my opinion the State had offered prices far below market value, and perhaps too low.

Mr. MAY. So, in your experience you believed that invariably the property owner received less than fair value from property taken by the Government in land condemnation cases?

Mr. LAWTON. No, not in all cases. In some cases you would find that situation to exist quite noticeably.

Mr. MAY. Did that disturb you?

Mr. LAWTON. Well, I observed on many occasions where the people were perhaps not receiving full value, and I had appeared in court many times to try to establish the correct market value, and that factor was in my mind; yes.

Mr. MAY. Did this lead to a certain attitude on your part, or a certain philosophy with respect to the appraisal work that you would do in a land condemnation case?

Mr. LAWTON. Well, I don't know about that. I couldn't answer that, sir. I wouldn't intend it to, and wouldn't expect it to.

Mr. MAY. Were you prone to be more liberal in appraising a piece of property being taken for land condemnation than you might otherwise be?

Mr. LAWTON. I think that would be natural, yes. I think you might be.

Mr. MAY. Did you expect that the Government would be prone to pay to the property owner the figure that you established in your appraisal report?

Mr. LAWTON. I didn't know what the policy of the Government was—whether they did that or not. I naturally would assume if my appraisal were considered to be high, or out of the way at all, they would not pay people what they considered right from their viewpoint. The same as the owner would go to court to establish his figure. So I was accustomed to going to court to establish any price, whenever there was any difference of opinion. I expected it to be the same in a case like this.

Mr. MAY. We also have this situation: You had never done any work for the Department of Public Works of Massachusetts previously?

Mr. LAWTON. No, sir.

Mr. MAY. You were aware that so-called experts had already done some work for the department of public works on the Damort property, and they had come in with their appraisal report, and their figures ranged from \$55,000 to \$67,000. You were aware of that?

Mr. LAWTON. Yes, sir.

Mr. MAY. Did all of this influence you in any way, Mr. Lawton, with respect to the value of the property?

Mr. LAWTON. It may have to a degree, unconsciously.

Mr. MAY. Now, armed with this information, when you went out to do that appraisal of the Damort property for the State, were you influenced as to the possible range of value?

Mr. LAWTON. It was not my intention to be influenced. If I was unconsciously influenced, that is hard to answer. I considered the property on its best value basis to the best of my ability.

Mr. MAY. When you went out to Damort with the knowledge that other experts had appraised it for \$55,000 to \$67,000, you had little trouble in coming in with the \$60,000 figure; is that right?

Mr. LAWTON. Well, I had to study the property from all angles before I could make up my mind to say whether I thought other figures were correct. If they were not correct I would not put out an incorrect item.

Mr. MAY. Mr. Lawton, would you admit that your \$60,000 figure on Damort is most liberal?

Mr. LAWTON. It was liberal, but possibly not most liberal.

Mr. MAY. When you submitted your appraisal report, Mr. Lawton, you certified to certain matters. This is sworn to before a notary.

Mr. LAWTON. Yes, sir.

Mr. MAY. And you said, "I have no interest in said property, either present or prospective, nor have I ever had any interest in it."

Mr. LAWTON. That is correct. And from a real estate viewpoint I considered that I had no ownership in the property; owned no mortgage, first, second, or third. I didn't have any option on the property.

And many times on real estate I will have sold property and received—and then requested to make an appraisal and received it later. I did not consider the situation existing would at all disqualify me from making an appraisal.

Mr. MAY. What do you say now?

Mr. LAWTON. I say the same. I had no ownership in the property and many times I appraised property that I had been connected with before, and afterward; and that in no way would affect my appraisal or disqualify me.

Mr. MAY. You would say today that it would be a good practice to hire as a fee appraiser for the State a person whose firm attempted to sell a given piece of property and had been unsuccessful in selling it for a figure as low as \$20,000, and renting a piece of property, and you would say that that person should be hired as a fee appraiser for the State to establish the true value of the property? You would say that that man had no interest—no past interest in the property?

Mr. LAWTON. A person could make an appraisal and not be influenced by those factors, sir. Whether it would be good practice I would have to leave to your judgment, but I must say that it could in no way affect his appraisal. It does not have to affect any appraisal.

Mr. MAY. Do you consider, since you had no ownership in this property, that type of connection with it, that you actually had no interest in it?

Mr. LAWTON. Yes, sir.

Mr. MAY. That was your interpretation of what "interest" meant?

Mr. LAWTON. Yes.

Mr. MAY. Mr. Lawton, as this affair moved along there came a time that certain documents were destroyed. Would you explain that to the committee, please?

Mr. LAWTON. I did not consider those documents—from an interview with Mr. Webb I knew that interoffice correspondence, there were some letters removed, but I did not consider those documents, I considered those personal property.

Mr. MAY. What happened?

Mr. LAWTON. What is that?

Mr. MAY. What happened? Whose idea was it to look the correspondence over and destroy certain papers?

Mr. LAWTON. When Mr. Myette and I went to Mr. Webb's office upon a call from him—

Mr. MAY. Mr. Webb called?

Mr. LAWTON. Yes; he called the office. And certain questions that we asked Mr. Webb—

Mr. MAY. When you went to Mr. Webb's office, did you take your file along?

Mr. LAWTON. No, sir.

Mr. MAY. Both Mr. Webb and Mr. Myette testified you did.

Mr. LAWTON. No, sir; to my memory, I didn't have a file.

Mr. MAY. Did you have documents with you, your own papers or letters?

Mr. LAWTON. No, sir.

Mr. MAY. When you arrived at Mr. Webb's office, what happened then?

Mr. LAWTON. In conversation we asked Mr. Webb questions, and he said, "I will have to consult my file." And in looking at the file

there was a bill there, receipted bill for a commission. And I said, "That is incorrect, the payment was for services rendered by Mr. Webb in the transaction and not commission." The bookkeeper made an error in sending it.

And I said, "I will send you a corrected invoice for services rendered and not commission."

And he looked through other papers, he said—well, there were some items of interoffice correspondence, very innocuous, not important, that were removed, Mr. Webb removed them.

When we left the office he said, "You had better remove the same from your office files when you get to Taunton." That is the whole sum and substance of that.

MR. MAY. What was contained in the correspondence that was removed?

MR. LAWTON. There was some mention, as I remember, about offers for the property.

MR. MAY. Having to do with the value of the property?

MR. LAWTON. Something about offers that had been received; yes.

MR. MAY. Figures showing, for example, \$23,000, \$20,000, some indication of the value of the property, right?

MR. LAWTON. Yes.

May I explain at this time, with respect to this property of Damort land, it was bought by Mr. Webb more or less as a distress property from the land after the previous owner had died in 1956.

Now, between 1956 and 1958 Mr. Webb couldn't make up his mind firmly whether he wished to sell or not, it never really was on the open market.

MR. MAY. Mr. Lawton, I believe you are about to attempt to justify a value of \$60,000 for this property. We have had a great deal of evidence about the value of the property. We will have more evidence today about the value of the property. We will have evidence concerning your appraiser's report.

I would like to hold that in abeyance unless you want to comment and attempt to justify the \$60,000 figure.

MR. LAWTON. I will be guided by your questions.

MR. MAY. Did Mr. Harney's telephone conversation with you in late 1960 also mention the Charpentier property?

MR. LAWTON. Yes.

MR. MAY. Did he tell you what the range of the appraisal on that property had been?

MR. LAWTON. If he did, I can't remember that; that is a blank.

MR. MAY. You don't remember whether he did or not?

MR. LAWTON. No; I can't.

MR. MAY. Did you think there was anything unusual in Mr. Harney mentioning the range of the other appraisals? Was this something that was supposed to be confidential in the appraisal field?

MR. LAWTON. Well, I didn't regard it particularly as important, because many times when appraisals were asked for, the people asking for the appraisals give you ideas and a range, and their thoughts on the matter. It is normal for people to do that.

MR. MAY. In this program, Mr. Lawton, it is expected that the Government will receive independent appraisals, appraisals by the individual, by him alone, his appraisal, he shouldn't be influenced

by somebody else's appraisal, these figures are supposed to be most confidential. You don't remember his talking about the range of appraisals?

Mr. LAWTON. I don't know.

Mr. MAY. But as you have seen from the letter, you were assigned to that property?

Mr. LAWTON. Yes.

Mr. MAY. Mr. Chairman, our investigation has shown that Mrs. Louise Charpentier was introduced to Mr. O'Connell, James S. O'Connell, by Mr. Frank Harney, at an auction down in the Attleboro area. Mrs. Charpentier said that she never retained Mr. O'Connell, she had another lawyer. However, in the files of the department of public works the first sheet of the departmental appraiser shows as lawyer for the Charpentier property Mr. James S. O'Connell. However, the files of the department do not show the receipt of any letter from Mr. O'Connell notifying the department that he was the attorney; the files do not contain any letter from the department to the property owner stating that it had been notified by Mr. O'Connell that he was the attorney: as a matter of fact, Mrs. Charpentier released her regular attorney as this matter progressed and finally settled the case for herself. We learned that Mrs. Louise Charpentier for a period retained the services of a real estate firm, G. L. & H. J. Gross, Inc., of Providence, R.I.

And we have an affidavit, Mr. Chairman. May we have Mr. Constandy read it in the record at this point?

Mr. BLATNIK. Mr. Constandy?

Mr. CONSTANDY. The affidavit reads as follows:

Charles J. Mason, being duly sworn and deposes and says:

I reside at 23 Hilltop Avenue, Providence, R.I.

I am vice president of G. L. & H. J. Gross, Inc., with offices at 170 Westminster Street, Providence, R.I. The said firm is engaged in the real estate and insurance business.

In 1957, at the request of Edwards & Angell, a law firm with offices at 15 Westminster Street, Providence, R.I., my firm made an appraisal of real estate located at 20 Mann Street, South Attleboro, Mass., on behalf of Louise Charpentier, executrix of the estate of Joseph Charpentier, deceased. The appraisal report dated September 12, 1957, reported the fair market value of the real estate, buildings and improvements located thereon to be \$60,000 as of January 22, 1957, the date of the decedent's death. The report did not include the value of the machinery located on the property.

The appraisal report was made for inheritance tax purposes. The valuation arrived at I believe, based on my experience, is as accurate as can be determined.

The margin of inaccuracy, if any, would be 10 percent lower or 10 percent greater. That is, the valuation, in any event, would not be less than \$54,000 or greater than \$66,000.

To the best of my recollection my firm was, in 1958, requested by the said law firm of Edwards & Angell to make another appraisal of the same Charpentier property which I was advised was to be taken or condemned by the Commonwealth of Massachusetts. With the consent of Edwards & Angell, I engaged Charles M. Lawton, Jr., a real estate broker in Pawtucket, R.I., to make the appraisal. It was my opinion that he was particularly acquainted with Attleboro values, his business being in close proximity to that area.

Before Charles M. Lawton, Jr., had completed his appraisal he, to my knowledge, was notified during the summer of 1960 by Mr. Elmer E. Tufts of Edwards & Angell that they no longer represented Louise Charpentier in the matter of the taking of her property. Mr. Lawton did not complete his report. Thereafter he submitted a bill to us for \$100, which sum we paid to him by check on September 20, 1960.

I have made this affidavit willingly and voluntarily at the request of James J. Fitzpatrick and Robert A. McElligott, who have identified themselves to me as being associate counsel to the Special Subcommittee on the Federal-Aid Highway Program, House of Representatives, Washington, D.C.

If I were called to testify as a witness before this subcommittee, my testimony would be substantially the same as the contents of this affidavit.

CHARLES J. MASON.

Subscribed and sworn by a notary.

Mr. MAY. May we make that exhibit 14?

Mr. BLATNIK. Without objection, it is so ordered.

(The document referred to was marked "Exhibit 14" and will be found in the files of the committee.)

Mr. CRAMER. So I understand the sequence of events, this is the 20th of September that he was employed, of 1960, September 20 he was paid \$100. During the summer of 1960 he was employed. Was he at that time under the employment of the State to appraise this property as well?

Mr. MAY. No, sir, not as of that time.

Mr. Lawton, did you actually make an appraisal of the Charpentier property?

Mr. LAWTON. No.

Mr. MAY. For anybody?

Mr. LAWTON. No. Mr. Mason said that if he needed one, would I hold myself in readiness. And he said, "When we are ready, why, we will let you know, either Mr. Tufts or myself." I never heard from either one of them.

Mr. MAY. In the course of that affair did you look at the property at all to begin an appraisal, to gather any data at all, did you do anything?

Mr. LAWTON. I may have walked through the property once.

Mr. MAY. You did receive a hundred dollars?

Mr. LAWTON. Not until a year or two later. That was at Mr. Mason's instigation, not at mine.

Mr. MAY. That is correct, Mr. Lawton. We have a check here that is dated September 20, 1960, \$100 from the Gross Co. to C. H. Lawton & Son. This was September 1960, and you were retained by the State on January 29, 1960. However, this affair with the Gross Co. took place even prior to that, and you were released by them prior to January 1960?

Mr. LAWTON. That is true.

Mr. MAY. Mr. Kopecky, we have some data from the State files with respect to the Charpentier property?

Mr. KOPECKY. Yes, sir; we have some dates and some amounts as to various appraisals as follows:

In December of 1959 the State appraisal was made by a Mr. Hopkins of \$146,000.

On December 2, 1959, a fee appraisal was made by Ernest Collins, \$173,000.

On December 8, 1959, another fee appraisal was made by a second party, Joseph Schwartz, \$171,370.

On January 21, 1960, the review board requested an additional appraisal to be made.

On February 13, 1960, Mr. Charles Lawton, Jr., submitted an appraisal of \$155,000.

On February 26, 1960, the review board established a figure of \$155,000, the same amount.

Thereafter, a settlement was made in the amount of \$155,000.

Mr. WRIGHT. Mr. Chairman?

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Would you ask Mr. Kopecky if he would repeat those two appraisals, one by Hopkins and one by someone whose name I didn't get?

Mr. BLATNIK. Collins.

Mr. KOPECKY. State appraisal made in December of 1959 by Mr. Hopkins, \$146,000.

On December 2, 1959, a fee appraisal was made by Ernest Collins, \$173,000.

Mr. WRIGHT. What was that again?

Mr. KOPECKY. \$173,000.

Mr. MAY. Mr. Chairman, during our investigation we talked with Mr. Webb, and Mr. Webb told us that when Harney was explaining to him how Harney brought these things to pass, Harney also volunteered that he was able to get the same fee appraisers who worked on Damort assigned to the Charpentier case. We went back and checked the records, and that is exactly what we found.

Mr. Hopkins, Mr. Collins, Mr. Schwartz, and Mr. Lawton all appraised the Damort property, and they all appraised the Charpentier property.

I would like to point out that in the Damort case we had Hopkins with \$54,000, fee appraisers \$67,000, \$65,000, it went to the review board, they asked for another appraisal, and Mr. Lawton came in with \$60,000, and the review board said \$60,000, and the case was settled for \$60,000.

In the Charpentier case Hopkins had \$146,000, Collins \$173,000, Schwartz \$171,307, and it went to the review board, and they didn't set a figure, they asked for another appraisal, and it was assigned to Mr. Lawton, who came in with \$155,000, and the review board fixed \$155,000, and the case was settled for \$155,000.

Mr. Beasley, whose testimony we received today, said that the true value of that piece of property was \$67,600. Mr. Beasley had no knowledge that previously the Gross firm had made an appraisal, and they said up to \$66,000. So you have up to \$66,000, and Mr. Beasley \$67,600. And yet the State paid \$155,000 for the Charpentier property.

Mr. Lawton, we have reached the point where a discussion of your appraisal might occur. I would like to hold that in abeyance, because we are going to have expert testimony with respect to these matters.

I have no further questions at this point of you.

Mr. WRIGHT. Mr. Chairman?

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Mr. Lawton, did I correctly understand that you had two telephone calls from Mr. Harney asking if you would be interested in making a fee appraisal?

Mr. LAWTON. Yes, sir.

Mr. WRIGHT. The first was prior to January 21?

Mr. LAWTON. Yes.

Mr. WRIGHT. The second was between January 21 and the time you were actually authorized by the State to make these two appraisals?

Mr. LAWTON. Yes, sir.

Mr. WRIGHT. You live in Rhode Island. You stated, I believe, that you had not previously made any appraisals for the State of Massachusetts?

Mr. LAWTON. That is correct.

Mr. WRIGHT. And you had not made any appraisals for any State or public body; would that be a correct statement?

Mr. LAWTON. That is correct.

Mr. WRIGHT. Therefore, would it be correct to say that at the time of Harney's discussion with you, prior to your authorization by the State to make these appraisals, you did not know it was contrary to the law for the amounts of appraisals made by those representing the State to be divulged to others?

Mr. LAWTON. No, sir; I didn't know that.

Mr. WRIGHT. You did not know at that time that there was anything wrong with it?

Mr. LAWTON. No, sir; I did not.

Mr. WRIGHT. You did learn later when you received from the State this form letter dated January 29, signed by Mr. Toumpouras, in which it stated that you were not to divulge to any other party the sum of your appraisals? At that time you learned that it was improper, and I suppose unlawful?

Mr. LAWTON. No, that said that I shouldn't divulge, which, of course, I didn't, but it didn't say anything about a State employee divulging; they are two different things.

Mr. WRIGHT. Are they two different things? Would you draw an assumption logically that if the fee appraiser working for the State were not allowed to divulge the figure of his appraisal, then it would be permissible for a State employee to divulge the figure of his appraisal?

Mr. LAWTON. Well, I don't know that any State appraiser had divulged the information. Mr. Harney was not an appraiser.

Mr. WRIGHT. A State appraiser had not divulged it? How would Harney be in possession of it?

Mr. LAWTON. I couldn't answer that; I don't know; I have no idea.

Mr. WRIGHT. You did know that Mr. Harney had the figures, or at least you thought he had the figures of earlier appraisers?

Mr. LAWTON. Yes; that is true.

Mr. WRIGHT. But at that time this did not seem strange to you; is that correct?

Mr. LAWTON. At that time; yes, that is true.

Mr. WRIGHT. Now, I want to go back briefly into the testimony earlier given in which you volunteered, if I correctly recall, that on the occasion of that discussion with Mr. Harney you had told Mr. Harney that any appraisal you made would have to be on the basis of your personal inspection of the property, and strictly on the basis of your own professional judgment as to what it was worth?

Mr. LAWTON. Yes, sir.

Mr. WRIGHT. That you could not and would not make an appraisal on any other basis?

Mr. LAWTON. Yes, sir.

Mr. WRIGHT. After you had made this statement Mr. May asked if Mr. Harney had suggested to you in telling you what three appraisals were that your appraisal would be somewhere in that range, and at that point you said no, you didn't recall that he had made any such real or tacit suggestion. Do you still feel that there was no tacit or implied suggestion that you felt at that time when Mr. Harney called and told you that there had been appraisals ranging from \$55,000 to \$67,000 that yours should be in that range?

Mr. LAWTON. Not particularly, no. I had to make my own appraisal, and that is the way I so stated.

Mr. WRIGHT. Precisely. But if you thought there was nothing wrong with Mr. Harney's divulging to you the range of the other appraisals, and if you didn't feel that Mr. Harney was suggesting to you that your appraisals should be within that range, then why would you find it necessary to say to Mr. Harney, "Well, I can't do it that way, I have got to go out and look at the property myself and do it on the basis of my own professional judgment"?

Would you find it necessary to say this to Mr. Harney if he had not tacitly or in some implied way suggested to you that your appraisal be within the range of those three?

Mr. LAWTON. I don't know.

Mr. WRIGHT. Now, with respect to the knowledge you had of this property, I believe you testified that you had not personally seen the property.

Mr. LAWTON. I saw it from the exterior; I was familiar with the outside, but I had never been through the property or in the buildings or inspected it carefully.

Mr. WRIGHT. You hadn't inspected the property?

Mr. LAWTON. Not carefully.

Mr. WRIGHT. You did know, of course, because your firm had the property listed for sale, that you had not been able to get the price the owner was asking, which I think was \$23,000?

Mr. LAWTON. There was a very good reason for that. In 1958, immediately at that time, it was known that this property might be in the line of a freeway, and that is a destroyer of values. When anyone knows that a property is in the line of a freeway, it is practically off the market, its market value then is nonexistent, people will not buy houses in the line of a freeway, and people will not buy any property in the line of a freeway. So your market value is destroyed.

Mr. WRIGHT. That is the reason, then, you feel, that you were not able to get the \$23,000 Mr. Webb asked?

Mr. LAWTON. To my knowledge, there was never any firm price on it. It was always said, "Get an offer."

Mr. WRIGHT. You knew what the bank was willing to loan on the property?

Mr. LAWTON. I was not aware of what they would loan; no.

Mr. WRIGHT. You knew that it was being rented, or a part of it was being rented, for \$75 a month?

Mr. LAWTON. A very small quantity, yes, sir; not the entire property.

Mr. WRIGHT. You testified at some length as to your philosophy of appraising the property. You stated that your experience and observation had been that the State frequently in condemnation did not give the property owner what his property was worth.

Mr. LAWTON. On some occasions.

Mr. WRIGHT. And you stated that your appraisal for that might have been liberal but not overly so.

Let me ask you this: You said you had been appraising property for banks for about 40 years.

Mr. LAWTON. Yes.

Mr. WRIGHT. If you had been appraising this property for a bank would you have come up with the same figures?

Mr. LAWTON. That would depend on circumstances, if it was for an inheritance tax purpose, if it was an estate such as sold the property to Mr. Webb, it would be a lower figure; yes, sir.

Mr. WRIGHT. I understand something about the figure of appraisals for purposes, but if you were appraising it for a bank on the basis of the bank's wanting to know how much money to loan on the property, you couldn't get an appraisal of that amount on it?

Mr. LAWTON. Possibly not as high as \$60,000 for a bank evaluation for a market business.

Mr. WRIGHT. Is there a double standard on these things? When we appraise property for the State or the Government to take, are we to appraise it higher than if we are appraising it for a private firm or individual?

Mr. LAWTON. An appraisal for a bank is for one purpose; namely, for a mortgage that may stand for quite a period of years. The appraisal normally for the condemnation, I think, should take into consideration its potential value, the fact that the property is not able to be sold by an owner because of condemnation—he doesn't have an opportunity to hold it for increased valuation, for a change of use from industrial to commercial. The factors of growth that are inherent in the property are destroyed and taken away from the owner when there is condemnation threatened.

Mr. WRIGHT. I think I can understand that.

Mr. CRAMER. Will the gentleman yield on that point?

Mr. WRIGHT. After one more question I will yield.

And this question relates back to the point of your discussion the second time with Mr. Harney when he told you the range of appraisals that had been made on the property. For some reason you found it necessary to say to Mr. Harney:

My appraisal is going to have to be based on my own judgment and my own professional inspection of the property, and cannot be based on any other criteria.

For some reason you found it necessary to say this to him. Isn't it possible that Mr. Harney may have suggested to you that he would expect an appraisal somewhere within the range that he had cited to you?

Mr. LAWTON. I can't remember that fact.

Mr. WRIGHT. You can't remember that?

Mr. LAWTON. I can't recall that.

Mr. WRIGHT. But you do recall that you felt obliged for some reason to say to Mr. Harney on that occasion that you would not make any appraisal save on the basis of your own professional analysis of the worth of the property after having inspected it?

Mr. LAWTON. Yes.

Mr. WRIGHT. Thank you.

Mr. CRAMER. Mr. Chairman?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Don't you think, relative to value, that what Mr. Webb paid for it before this question of the expressway was raised is an element in considering value, and didn't you know, since he had it with you for sale and discussed it with your firm, that he paid \$20,000 for it?

Mr. LAWTON. In the first place, Mr. Webb never asked me at any time what I thought the property was worth or what it should sell for.

Mr. CRAMER. Did he tell you what he paid for it?

Mr. LAWTON. I knew approximately what was paid.

Mr. CRAMER. How much?

Mr. LAWTON. I think it was in the neighborhood of \$20,000.

Mr. CRAMER. \$20,000, wasn't it?

Mr. LAWTON. Yes. And you must remember, sir, that was a distress sale. The former owner had died, it was sold to Mr. Webb by the bank, that had to get rid of the property to get assets. They didn't have an opportunity to wait for the market to be normal; it was more or less of a distress sale when sold to Mr. Webb by the bank.

Mr. CRAMER. Well, the bank is not going to give the property away if it discharges its responsibilities to the State. They have a duty and the court has a responsibility to oversee the sale, and see that it is sold for a reasonable value; is that correct?

Mr. LAWTON. At that particular time, under the conditions that were existing, the bank did not have an opportunity at any time to wait until the situation favorable in the market for a sale developed. They have to hurry many times, they need money, they have to move and close an estate and pay inheritance taxes within a year. The time elements crowd them; they have to sell quickly many times.

Mr. CRAMER. Mr. Nevins has an affidavit in the file, has he not, counsel? He was with the bank, was he not?

Mr. MAY. Yes.

Mr. CRAMER. And in 1955 his appraisal was what, \$20,000?

Mr. MAY. \$20,000.

Mr. CRAMER. That wasn't a forced sale?

Mr. LAWTON. Well, at that particular time—was that for the bank?

Mr. CRAMER. It was for the estate.

Mr. LAWTON. Then the man had died, and he had to put a value on it so that he could move very quickly.

Mr. CRAMER. It was a 3-year period before it was sold, and it was sold at \$20,000, and it was valued 3 years before at \$20,000, and that is hardly a forced sale over a 3-year period: it shows the property wasn't worth what they were asking for, or they would have been able to sell it over a 3-year period.

Mr. LAWTON. I don't think so.

Mr. CRAMER. If you had a piece of property listed for 3 years at a certain price, and you didn't sell it, you would ask the seller to bring his price down?

Mr. LAWTON. The buying public is quite aware and quite acute with respect to existing circumstances with respect to ownership. They know that people can't hold it, it is very prevalent for the buying public to wait out the owner until they can force the owner at their own price.

Mr. CRAMER. That would assume that you had one possible buyer. If you have got a series of buyers they are obviously going to buy it

knowing that they are in competition with somebody else, if you didn't have just one buyer interested. Mr. Webb was the only one interested. He bought it finally for \$20,000, and then requested subsequently an appraisal with the bank for the purposes—is it not correct, counsel—for the mortgage that Mr. Webb got on the property for around \$15,000—that appraisal was \$22,000, was it not?

MR. MAY. Yes, Congressman. If it would be of some help here, I can point out the indications of value that we have received on the record thus far.

In May of 1955, the appraisal for tax purposes, \$20,000.

February 1956, bought by the Damort Co., \$20,000.

The bank appraisal at that time, \$22,500 for mortgage purposes.

Mr. Webb placed it on the market and tried to get \$23,000 and couldn't get it. He brought his price down to \$20,000 and couldn't get it. The highest offer he ever received was \$70,000. You people tried to rent it and you got \$75 a month.

MR. LAWTON. We didn't try to rent it, sir.

MR. MAY. But you rented it?

MR. LAWTON. Some people came in and asked if they could rent it. No effort was ever made on our part to rent it.

MR. MAY. The point is this: You are representing the property owner; he would like to rent his property.

MR. LAWTON. He never said so; he never said that ever, to us.

MR. MAY. He consented to rent it to Mr. Myette. Mr. Myette simply took \$75, and you said you could get more?

MR. LAWTON. For the entire property; yes.

MR. MAY. You could have gotten more, but you didn't; you just took the \$75?

MR. LAWTON. We never tried, we were not engaged to do it.

MR. CRAMER. During the time you handled the property you only got one offer on it according to my notes, which was not even submitted to Webb, for Webb was asking \$23,000. Are you familiar with that? The only offer you got in this period you held it in his behalf as real estate agent for him was \$12,000?

MR. LAWTON. I would say that was not correct.

MR. CRAMER. What is correct?

MR. LAWTON. People had made offers, I believe, higher than that to Mr. Webb, but as I explained to you this threat of condemnation lay over the property, and you couldn't engender any interest in the property because of the threat of condemnation during that later period, from 1958 on. People would buy it at a low figure. And once you have the threats of condemnation you do not have a—

MR. CRAMER. I realize that. But the threat of condemnation did not increase its value from the \$20,000 paid by Mr. Webb before the threat to \$60,000 which you appraised it at simply because the State was going to take it over under condemnation proceedings.

MR. LAWTON. What a man is willing to take for the property does not make market value.

MR. CRAMER. Isn't that one of the elements that an appraiser has to consider, what it has been sold for in the past, what the owner is asking for it. And certainly you, representing through your firm the seller, and having been unable to sell it over a long period of time, and not having gotten any offers, had some personal knowledge of what the value was relating to those elements.

Mr. LAWTON. Those are conclusions that you draw, but they are not really good conclusions.

Mr. CRAMER. I am asking you as an appraiser—you were hired as an appraiser by Massachusetts, the assumption is that you are qualified as an appraiser—do you consider yourself qualified as an appraiser?

Mr. LAWTON. Yes.

Mr. CRAMER. And as an appraiser isn't the prior sale value, the prior experience in trying to sell it, the prior appraisals by banks and otherwise, aren't those elements, at least the first two that I mentioned, elements you must consider in giving a proper appraisal?

Mr. LAWTON. Yes, those should be considered.

Mr. CRAMER. Why weren't they?

Mr. LAWTON. They were, but it was not the primary consideration that should be given.

Mr. CRAMER. You have the file copy of your submission of the appraisal submitted by you to the State?

Mr. LAWTON. Yes.

Mr. CRAMER. Has counsel had the opportunity—

Mr. MAY. Congressman, we have it here, and we will have considerable testimony here by experts with respect to this and other appraisals as to true value of this property.

Mr. CRAMER. How could you properly justify \$40,000, a 200 percent increase above the initial \$20,000 paid, in your appraisals, particularly in view of your statement that the taking itself depreciates the value, and in view of your statement that you acknowledge that it couldn't be sold by your own firm for even \$23,000? Where did the \$40,000 come from? It didn't come out of thin air, or did it?

Mr. LAWTON. No, sir. The property that sold very near by in 1958, a former coalyard, sold for 50 cents per square foot for land. In an appraisal of the property you have to start—I started with land value to begin with, you have land value, a railroad frontage land, to my opinion—

Mr. CRAMER. How far away was that?

Mr. LAWTON. That might have been a third of a mile.

Mr. CRAMER. A pretty good distance away. How about property in the immediate vicinity?

Mr. LAWTON. Well, properties have to be considered that are like properties and comparable, although not in the immediate vicinity. You wouldn't have another lumberyard in the immediate vicinity, sir. When we have a piece of real estate, every piece of real estate is individual, and it is different from the one next door. You have railroad tracks in the land, you have a building in excellent state of repair. You have a land, you have a building, you have railroad tracks. All those things have to be considered.

Mr. CRAMER. If it is worth that much, why wasn't it listed with your own firm for that much for sale over this extended period of time that Webb was trying to sell it? And why didn't Webb pay more for it at a time when this expressway wasn't even in the picture?

Mr. LAWTON. Because this was a distress property when he bought it, it was unoccupied lumberyard, not doing business.

Mr. CRAMER. It wasn't very good property, was it?

Mr. LAWTON. Yes, it was good property, physically in excellent condition, but it so happened that the man had died, that it couldn't be operated. You have a vacant mill subject to vandalism, and you

can't get a buyer except at a low price. If it is a going concern, the price will be much higher.

Mr. CRAMER. You don't think the appraiser would appraise it 300 percent less than its true value for market purposes, do you?

Mr. LAWTON. It depends a great deal upon who is buying it and what use they are going to put it to.

Mr. CRAMER. No matter what the use is, there isn't that much difference, the fair market value is what an appraiser is supposed to come up with, isn't it?

Mr. LAWTON. That is correct.

Mr. CRAMER. Whether it is for mortgage purposes or tax purposes, unless the Federal Government is going to take it it should be on the basis of fair market value?

Mr. LAWTON. When you have a Federal Government you do not have a willing seller in that case, in condemnation you do not have a willing seller.

Mr. CRAMER. No, I am talking about for State purposes, unless you are going to sell it for State purposes you have to put a fair market value on it.

Mr. LAWTON. Yes.

Mr. CRAMER. So why is fair market value for mortgage purposes and Uncle Sam for State purposes, condemnation purposes, there is a different market value in each instance, as much as 300 percent difference.

Mr. LAWTON. There may be, yes.

Mr. CRAMER. \$40,000 as compared to \$20,000.

Mr. LAWTON. Yes, sir, there may be.

Mr. CRAMER. I don't think this witness is being wholly candid.

Mr. MAY. I think this might be helpful, Congressman. Apparently Mr. Lawton is attempting to justify the property value at the time Mr. Webb bought it at a distress sale. We have an affidavit, we have read it in the record, from Mr. J. Benjamin Nevin. He had something to do with this property, too. He said—

In June 1954, Roscoe W. Phillips retained me to sell for him property owned by him and located at 2 Allen Street, Attleboro, Mass., consisting of a lumberyard

I advertised the property for sale on a number of occasions—

and this is in 1954, long before the road was filed, 2 years before Mr. Webb bought it,

I advertised the property for sale on a number of occasions and made other efforts to sell the property, but was unsuccessful. In trying to sell the property I offered it for sale in two different forms: (1) as a going business, that the sale was to include, in addition to the land, buildings and spur track, the lumber on the property, and all equipment, trucks, etc.; (2), I also offered it for sale without the lumber and equipment, trucks, etc., and as stated before I was not successful in finding a buyer.

The property was difficult to sell because it was a long, narrow and small piece of land occupied by the buildings on it.

And in Mr. Nevin's appraisal itself he states—

This is a small lumberyard located in and off the main line of traffic on Route 1 from Providence to Boston. The property is at least one block in and cannot be seen from the main road. For the past year and a half my office has tried to obtain a buyer for this lumberyard as a going business but we have been unsuccessful. In fact, we have not obtained an offer for the yard either with the inventory or without the inventory. As I see this property, one great trouble is that it

is right at the Massachusetts-Rhode Island line and is a little far removed from the Attleboro trade and Rhode Island trade doesn't like to cross the line to do business in Massachusetts.

Also—

Mr. Nevin said—

as a lumber yard, or if a buyer could be found to start a lumberyard, I feel a price of \$25,000 might be obtained for this property. On the other hand, I feel that the ordinary buyer would not pay over \$20,000 for this property.

Then Mr. Phillips died, and thereafter, says Mr. Nevin—

I was requested by the Industrial National Bank at Providence to appraise the property at 2 Allen Street, Attleboro, Mass., for inheritance tax purposes. I made the appraisal and my valuation of the land and building and other improvements was \$20,000 as of May 4, 1955.

So the record is clear that from 1954 throughout this affair you are talking in the range of \$20,000.

Mr. Beasley will testify that he made his appraisal right after your appraisal, Mr. Lawton, \$26,500. We will hear all that testimony this afternoon and get a real good idea of the value of the property.

Mr. CRAMER. In addition to that, of course, the owner himself, Mr. Webb, was tickled to death to get \$30,000 out of the \$60,000, which is one of the best evidences of the value of the property.

But the reason why this is important, Mr. Chairman, and why I am trying to get as much factual information from Mr. Lawton as I can, is this whole conspiracy to defraud the Federal Government which has cost hundreds of thousands, if not millions of dollars, in Massachusetts, and possibly other places throughout this country, can only succeed if the appraisers are parties to that conspiracy; can only succeed if you start out with the basic, false, fraudulent appraisal, and that, according to the Massachusetts procedure, Mr. Chairman, if that is what the board of review has before them, in setting a maximum value is fraudulent appraisals, if that is what the Attorney General has before him in presenting the case to the court, is fraudulent appraisals, then the amount paid is going to be clearly fraudulent, and the taxpayers are going to be bilked. So the way it is set up in Massachusetts, and I assume many other States, if you got a fraudulent appraisal to start with, you are going to have fraud throughout; it starts at the bottom and works all the way up from the hiring of these fee appraisers.

Now, you got out of this, and it is quite obvious Harney hired you for the purpose of getting the appraisal he wanted. You say he didn't suggest a figure. It is interesting that the figure that you came up with was exactly what was settled for and was exactly in the range of the other appraisals, which I assume we will have testimony on later.

The same is true on the Charpentier property.

Now, you were paid, according to the record, \$1,000, \$500 for each, \$1,000 for both. In order to make this conspiracy work you had to turn in a fraudulent appraisal. In order to get the State to pay more than the property was worth, for the owner to get more; that is, the owner and his lawyer and Mr. Harney, or whoever else was involved, to get their cut of the \$30,000 in this one instance, the appraisal had to be in excess of what the property owner was willing to take, which was \$30,000.

Now, how much more did you get than the thousand dollars out of this?

Mr. LAWTON. The office was paid for the care of the property that had been done previous to this, the \$1,500.

Mr. CRAMER. How much did you or your firm get directly or indirectly out of this one particular taking, the Damort land taking?

Mr. LAWTON. Well, exactly what you have just stated.

Mr. CRAMER. I haven't stated anything. How much did you get?

Mr. LAWTON. Well, I said that the \$1,500 was paid to the firm for the care of the property, and to keep it from being vandalized during the period that it was being rented.

Mr. CRAMER. Yes, and how much did O'Connell and Harney pay you?

Mr. LAWTON. Nothing, sir, nothing; there was absolutely no conspiracy whatsoever.

Mr. CRAMER. I am familiar with the \$1,500 that you got as a commission for the sale of the property. Was that based upon the \$30,000 that the owner, Mr. Webb, actually got, rather than the \$60,000 which the State paid and the Federal Government?

Mr. LAWTON. Yes.

Mr. CRAMER. Well, the thing that I have difficulty with is that in order for this conspiracy to work you had to be a part of it.

Mr. LAWTON. No, sir; I was not.

Mr. CRAMER. And apparently it was so found recently by the jury. And I find it difficult to believe that you would render such services and take such risks, for \$500. And you say before this committee you received no other compensation directly or indirectly?

Mr. LAWTON. Absolutely, that is correct.

Mr. CRAMER. And no promise of any future employment by O'Connell or Harney?

Mr. LAWTON. No, sir.

Mr. CRAMER. And nothing of value directly or indirectly from another one of you?

Mr. LAWTON. You are correct, nothing.

Mr. CRAMER. Well, if this is all you are getting out of it, then you think you came pretty cheap for inflating the value of this property from twenty or forty or sixty thousand dollars?

Mr. LAWTON. I do not consider it inflated, I considered it a correct value then as I do today. And it is well illustrated by a lumber yard now for sale in Pawtucket, 40,000 square feet with a 4,000 foot building on it, and the asking price is \$85,000, and offers of \$60,000 have been refused. More will be received for it. That is happening right today.

Mr. CRAMER. Then I gather from your testimony you see nothing wrong with your participation in this whole thing, the way it was set up, the way Harney approached it, the way he divulged to you the other values that were supposed to be kept confidential, the way he approached you with regard to making appraisals, the fact that you were employed at the same time by the owner himself to sell the property, you see nothing wrong with this whole transaction insofar as you are concerned.

Mr. LAWTON. I was doing normal business, and when I was asked to make an appraisal I made the appraisal. Appraisals come in all the time to the office, it is a small part of the business, and I per-

haps did not give it the due consideration that I should have at the time, all phases of it.

Mr. CRAMER. Well, it is obvious that either knowingly you were a party to this conspiracy, or unknowingly you were being used, one or the other.

Mr. LAWTON. I think, sir, the latter is the case. I can see now quite clearly how I was used, unfortunately.

Mr. CRAMER. Well, would you participate in such a thing again?

Mr. LAWTON. No, sir, absolutely not.

Mr. CRAMER. All right, then, what is wrong with it? How were you used? You say you thought you were used. How were you used?

Mr. LAWTON. Only in this respect, sir, my appraisal was correct. Mr. Webb—

Mr. CRAMER. Well, if it was correct you weren't used, then?

Mr. LAWTON. Okay, I wasn't used.

Mr. CRAMER. You said you were. How were you?

Mr. LAWTON. Mr. Webb's willingness to take one price, which I had no knowledge of it, made it appear that my appraisal was wrong because a lawyer probably had a large fee, that is your answer, as I see it.

Mr. CRAMER. It is not an answer to my satisfaction, because—you say you had no knowledge of what he was willing to take, and yet you participated in a document-destroying ceremony in which the evidence of what he said he was willing to take was destroyed. Now, how do you account for that, if you say that you had no knowledge of its real value according to Mr. Webb's own valuation?

Mr. LAWTON. Mr. Webb's opinion was not necessarily correct as to real value.

Mr. CRAMER. Then why did you destroy the evidence? Why was it important to destroy the evidence?

Mr. LAWTON. Well, it was Mr. Webb's idea, not mine. It was innocuous, it wasn't wise to do it, perhaps.

Mr. CRAMER. That is not what Webb testified to. Webb testified to the fact that he was trying to protect you on your request, that is how he testified, because you had made an appraisal far in excess of what he himself had put in writing and was willing to pay for.

Mr. LAWTON. I don't think that is so, sir.

Mr. CRAMER. You say Mr. Webb is not correct, is that right? You say Mr. Webb wasn't trying to protect you? Isn't that right?

Mr. LAWTON. I don't know why he suggested that we take it out.

Mr. CRAMER. You just got through testifying to the fact that you participated in this, that you went to Mr. Webb's office, and that you agreed to the destruction of letters showing that Webb was willing to accept \$23,000 for the property. Why would you do it if you didn't think something was wrong?

Mr. LAWTON. Well, I consider it to be interoffice correspondence and personal papers.

Mr. CRAMER. I know, but you don't destroy those things, particularly after an investigation has started, and you have knowledge of it, unless you have something to hide, now, do you?

Well, I think the answer to that is obvious. Apparently the witness doesn't wish to answer the question, and I guess he is not answering it.

You said that you, in filing this form, didn't think you were disqualified because you had no "interest" in the property?

Mr. LAWTON. Yes, sir.

Mr. CRAMER. Do you think as a matter of business ethics that you should represent both the owner and the State?

I am talking about business ethics, now, as a real estate man and as an appraiser, do you think that you should represent both the owner as you did in both the Charpentier property and in the Damort property, and the State that is obviously supposed to be at arm's length?

Mr. LAWTON. I see your point.

Mr. CRAMER. Do you think now that it is ethical to do that?

Mr. LAWTON. Evidently not, sir.

Mr. CRAMER. But you thought it was all right at that time?

Mr. LAWTON. Many times I appraised properties representing both parties, many, many times, so that it didn't enter my mind at the time. I can see the position now.

Mr. CRAMER. What do you mean, both parties?

Mr. LAWTON. Well, many times we have had a buyer and a seller of property both ask us to make an appraisal as to what we thought the correct value was, and then they would make that decision as to what they wanted to do about it.

Mr. CRAMER. That is hard for me to understand. I would never suggest the same appraiser make an appraisal for both sides.

Mr. LAWTON. Well, that has been done for many years many times.

Mr. CRAMER. Do you think the taxpayer is properly protected that way? You are a taxpayer, you pay gas taxes, do you think you are properly protected by having an appraiser on both sides of the fence?

Mr. LAWTON. These were private parties that I was speaking of, sir.

Mr. CRAMER. And then you were employed, according to this contract, January 29, 1960, at the same time you were employed by the law firm for Mrs. Charpentier, and by the Damort Corp.?

Mr. LAWTON. No. I had been discharged at that time, sir.

Mr. CRAMER. Well, this affidavit says to the contrary, that the firm—you were notified that Mr. Charles Lawton, before he had completed his appraisal—"he, to my knowledge was notified during the summer of 1960 that the firm was no longer retained." That was the summer of 1960.

Mr. LAWTON. That should be the summer of 1959, not 1960, because in the summer of 1960 the money had been paid and it was all over.

Mr. CRAMER. No, you were paid September 20, of 1960, according to the check.

Mr. LAWTON. Oh, yes, but it was long after the whole matter was settled, long after.

Mr. CRAMER. And you were employed by the State January 29, 1960.

Mr. LAWTON. That is correct. I was first spoken to by Charpentier in maybe the spring of 1959, and then discharged in the summer of 1959.

Mr. CRAMER. And they waited a whole year and 4 or 5 months to pay you?

Mr. LAWTON. That is correct.

Mr. CRAMER. But there is no question but what you were representing the seller, the owner, Webb, in the Damort transaction, and repre-

senting the State as well under this contract. And from an ethical point you now say you think that was wrong, but you didn't at that time, is that right?

Mr. LAWTON. Yes, sir.

Mr. COOK. Will the gentleman yield on that point?

As I recall the evidence, Mr. Lawton, you certified when you filed your fee appraisal that you had no interest in this Damort property, isn't that correct?

Mr. LAWTON. That is correct. And, as I explained previously, I consider that I didn't have any ownership in the property or hold any mortgage on it.

Mr. COOK. But you had a fee coming, didn't you, from the sale of the property?

Mr. LAWTON. Not necessarily.

Mr. COOK. And you collected \$1,500, didn't you?

Mr. LAWTON. Yes.

Mr. COOK. And you expected more or less?

Mr. LAWTON. No. That was purely up to the seller whether he paid it or not. We didn't sell the property.

Mr. COOK. But you expected to receive some fee for your agreement with the owner of the property, didn't you?

Mr. LAWTON. I understood that Mr. Webb had spoken to Mr. Myette and said if it were ever sold he might remember him for all the work that he had done on it. That was nothing to me.

Mr. CRAMER. As a matter of fact, one of the documents that you destroyed in the ceremony was the document indicating that you were to get 5 percent of the value of the bill to Webb for your commission on the sale of the property, wasn't it, that was one of the documents that were destroyed?

Mr. LAWTON. Yes, sir.

Mr. CRAMER. Sure. And why was that destroyed?

Mr. LAWTON. Because it was incorrect, the 5 percent was for the care of the property, the commission.

Mr. CRAMER. It was incorrect as a matter of hindsight, wasn't it? In other words, you realized that you were in a conflicting situation and you wanted to try to correct it, so you wanted to destroy the record?

Mr. LAWTON. The bookkeeper had been told originally to send the receipt for services rendered, and she had made the mistake.

Mr. CRAMER. And, of course, the 5-percent fee, the documentation of which has not yet been destroyed, 5 percent, depended upon how much he was paid by the State, 5 percent, whether he got his \$30,000, which was half of the \$60,000 and that depended on whether or not the State, through the appraisals, came to the conclusion that it was worth \$60,000 and was willing to pay \$60,000, and that depended on whether your appraisal had \$60,000 in it, didn't it? So you had a direct interest in how much the State paid, isn't that correct?

Mr. LAWTON. No, I don't consider it that way.

Mr. CRAMER. One more question. Did you ever do any appraisal for the State before?

Mr. LAWTON. No, sir.

Mr. CRAMER. This was the first one?

Mr. LAWTON. Yes, sir.

Mr. CRAMER. I will reserve my further questions for later.

Mr. GRAY. Mr. Chairman, is the witness coming back?

Mr. BLATNIK. The witness will be available this afternoon. We have one more point. Mr. May?

Mr. MAY. I would like to clarify one point. We heard that Mr. Lawton received a letter signed by an associate commissioner, George Toumpouras. I would like to clarify that. Normally the assignment letters would be signed by Associate Commissioner Fred Dole. Mr. Dole was away at the time and Commissioner Toumpouras signed this letter. We will have in the hearings considerable testimony with respect to the assignment of various fee appraisers, including Mr. Lawton.

Mr. BLATNIK. The hearing is recessed until 2 o'clock this afternoon. (Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

(Present: Representatives Blatnik (presiding), Baldwin, Cramer, Gray, Jones, Kluczynski, Robison, Schwengel, and Wright.)

Mr. BLATNIK. The special subcommittee on the Federal-aid highway program will please come into session, resuming hearings on the Massachusetts highway investigation.

Our first witness this afternoon will be Mr. Oscar Beasley.

Mr. BALDWIN. Could I ask a question, Mr. Chairman? Is Mr. Lawton going to be recalled this afternoon?

Mr. BLATNIK. Yes, he will be recalled.

Mr. BALDWIN. Thank you.

Mr. BLATNIK. Mr. Oscar H. Beasley, Jr., of the firm of Beasley & Beasley, valuation engineers, Washington, D.C.

Mr. Beasley, will you please take the witness stand? Will you raise your right hand? Do you solemnly swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BEASLEY. I do, sir.

Mr. BLATNIK. Be seated.

Mr. May.

Mr. MAY. Mr. Beasley, where do you reside?

TESTIMONY OF OSCAR H. BEASLEY, JR., OF THE FIRM OF BEASLEY & BEASLEY, VALUATION ENGINEERS, WASHINGTON, D.C.

Mr. BEASLEY. My home is in Alexandria, Va., the neighboring community of Washington, D.C.

Mr. MAY. Are you a member of the firm of Beasley & Beasley?

Mr. BEASLEY. Yes, I am a partner in the firm of Beasley & Beasley, valuation engineers, 1734 F Street NW., Washington, D.C.

Mr. MAY. What does the partnership consist of, Mr. Beasley?

Mr. BEASLEY. The partnership is a father-and-son relationship consisting of O. H. Beasley, senior and junior.

Mr. MAY. What type of services does your firm render?

Mr. BEASLEY. We are professional real estate appraisers and valuation engineers, and all services rendered by our firm center around fair market value studies of real property. Oftentimes we act as consultants to corporations, State or Government agencies, dealing in real

property matters, and in these matters we not only value real estate, but consult with management as to compliance and practices.

Mr. MAY. Will you give the committee a brief résumé of the qualifications of your firm?

Mr. BEASLEY. In the last 15 years my father and I have worked both in the field of real property valuation and as consultants. Our firm's services have been employed by many Federal agencies of the U.S. Government, such as the Internal Revenue Service, the Army Corps of Engineers, the Department of the Interior, the Bureau of Public Roads, the Department of Justice, the Veterans' Administration, the War Assets Administration, the Reconstruction Finance Corporation, the National Capital Housing Authority, the Maritime Administration, the Housing and Home Finance Agency, and others.

With regard to these assignments, we have appraised industrial, commercial, residential and agricultural properties in excess of \$1 billion, and located throughout the United States.

We have, in addition, appraised mass land areas for the establishment of air bases, missile launching facilities, industrial plants, military housing projects and public housing projects, dam sites, shipyards, and various military and public works projects.

Mr. MAY. In addition to services performed for governmental agencies, have you also been engaged by private firms?

Mr. BEASLEY. We have worked for many of the large business concerns and groups throughout the country, such as Bethlehem Steel Co., the Baltimore & Ohio Railroad, the Pennsylvania Railroad Co., Transamerica Corp., Staten Island Rapid Transit Railroad, and American Oil Co.; and for State organizations such as the Maryland State Roads Commission and numerous public utilities, insurance companies, and small business concerns, and so forth.

Mr. MAY. Have you done appraisal work in several States throughout the country?

Mr. BEASLEY. I believe that our firm appraised property in virtually every State in the United States except Hawaii, Alaska, and the State of Maine.

Mr. MAY. Have you been called upon, you yourself, to testify before certain courts and public bodies?

Mr. BEASLEY. Yes, I have appeared as a real estate expert in the Federal district courts of Maryland, Pennsylvania, Virginia, and Massachusetts; and in the circuit courts of Maryland and Virginia; and I have also appeared in the U.S. Tax Court, and before congressional committees.

Mr. MAY. Mr. Beasley, is your firm the same firm that has acted as consultant to the Bureau of Public Roads on right-of-way valuation problems within the past 5 years?

Mr. BEASLEY. Yes, sir. Initially our firm was employed by the U.S. Bureau of Public Roads in 1957 to review the fair market value of rights-of-way in the State of Indiana, particularly in the Gary and Richmond, Ind., area.

In 1958 we were assigned to study the value of right-of-way through the city of Reno, Nev.

In the past several years we have had several assignments throughout the United States, including the State of Massachusetts.

Mr. MAY. When was your firm first employed by the Bureau of Public Roads, Mr. Beasley, to make studies in Massachusetts?

Mr. BEASLEY. Initially our firm was employed in 1960—April of 1960. We were asked to value approximately 333 parcels of right-of-way in the Attleboro area. The right-of-way was a part of Interstate Route 95, which road in the State of Massachusetts begins at the Rhode Island State line and extends northeasterly.

Mr. MAY. How was that work accomplished, Mr. Beasley?

Mr. BEASLEY. Members of our company, staff, employees, approximately 20 of us all told, have worked full time in Massachusetts now for approximately a year and a half. When we entered Massachusetts in this work we began our study by assembling economic and market information as to the value of properties in the Attleboro area.

We were also furnished highway right-of-way plats and construction plans and the general information concerning the locations of right-of-way and parcels of property involved.

Mr. MAY. Mr. Beasley, it could be that strangers to the appraisal field would wonder how a person from Washington, D.C., could go to Attleboro and appraise a piece of property there and come out with the true market value. Would you go on and tell us how this can be done?

Mr. BEASLEY. I would like to say that the appraisal process is not unique at any particular location. As a matter of fact, it is a very clearly defined process and is equally applicable in any part of the United States. The time element for someone who is not located in a particular area becomes a factor, and there are occasions when the individual, or, as we refer to him occasionally, the local appraiser, can, let us say, take a shorter time to accomplish his work; but a stranger entering the community, given proper time, will find the true fair market value of a property.

Mr. MAY. All right. We will go on and talk about how you went about your work in Attleboro. You mentioned you were furnished right-of-way plats of Interstate Route 95 as it extends through Attleboro. What else were you furnished?

Mr. BEASLEY. Construction drawings, the plan and profile of the highway, and, of course, we did a tremendous amount of research.

I have an exhibit which I would like to set up here and which will show a map of Attleboro and the location of the highway, and explain briefly how we did approach this particular problem, if I may.

Mr. MAY. First, Mr. Beasley, how long did it take you to do this work in Attleboro?

Mr. BEASLEY. We started in May of 1960. I believe that our final reports were submitted in October or November. It took approximately 3,800 to 4,000 man-hours, I believe, in the Massachusetts area, on this particular project.

Mr. MAY. And you are about to tell us how you assembled economic data, and the process through which you went in order to complete this study?

Mr. BEASLEY. Yes, sir.

Mr. MAY. Will you do that, and use the exhibits?

Mr. BEASLEY. If I may in just a minute.

While this exhibit is being placed, I would say that it is a large-scale map of the community of Attleboro, Mass., and located thereon in the center is the Interstate Highway 95, and beginning at the lower lefthand corner of this map is the Massachusetts-Rhode Island State

line and Interstate Route 95 proceeds northeasterly through Attleboro.

The color schemes which are on this exhibit are land use. We first felt that we should, in approaching our valuation problems in Attleboro, determine what land uses were and what the values were applicable to these land uses. We determined the land uses and color-coded them, and then proceeded to examine in those areas for real estate transactions of current date, and to assemble the economic market information.

The city assessors in the city of Attleboro and the neighboring communities were quite cooperative in permitting us to use the city records, and where we had sales of properties which we could develop from the land records, and where we needed refined information as to what type of property it was, we would go to these records, and they would permit us to examine them and determine the floor plans of houses, and the number of rooms of houses, and their sizes.

After we had assembled this economic information we correlated it and determined what we considered to be the upper and lower limits of value by land use.

With this type of documentation and verification, because in many instances, or in most instances we contacted at least one party to the real estate transaction—we were able to establish in our minds a firm documentation of the market.

From there we began to examine the individual parcels of right-of-way, and to photograph them, and to examine into the details of their construction and use, and if they were rental properties what their rents were, and so forth.

We did find in some instances in Attleboro the properties had been either torn down or removed, because we came in during the course of construction. It was necessary in some instances to seek out the property if it had been moved, and to determine what its state was at that time, and to reconstruct the facts pertaining to that property.

Most property owners were very cooperative, and in instances where the property was completely demolished we did the best we could to reconstruct just exactly what had been the nature of the property. We relied upon neighbors and the public records and the individuals who owned the property, if we could find them.

MR. MAY. Several properties were still in existence, sitting there on the land when you began to conduct your appraisal. Is that right?

MR. BEASLEY. I think the greatest majority of the properties were still intact and in place in May 1960, when we first went in.

MR. MAY. Mr. Beasley, as you approached this study, were you furnished the departmental or fee appraisal reports that had been submitted on these properties in behalf of the State?

MR. BEASLEY. No, sir. We were given the plans and layouts, as I mentioned to you, and our fair market value was a completely unbiased opinion of the fair market value of the property at the time we were there. The only information or indication of value which we had was the information that periodically was published in the newspapers from the department of public works, where they announced a settlement; and oftentimes we did run into people who had settled; and, of course, they advised us as to their settlements when we visited with them.

MR. MAY. So you had not been given the appraisal figures on these particular properties.

MR. BEASLEY. That is correct.

MR. MAY. Do you have other aids that you might use in telling the committee how you went about the work?

MR. BEASLEY. Well, I have a graph exhibit which I actually put together after our initial appraisal was submitted to the Bureau, which portrays the facts pertaining to our value and other values that were related to the same properties. That formed a graph type of illustration, and I will be glad to set that up for you.

MR. MAY. Would that be helpful to us?

MR. BEASLEY. Yes, sir.

MR. MAY. While it is being set up, Mr. Beasley, during the course of your work you would make detailed studies of so-called comparable properties and market data information. Could you tell us a little about that?

MR. BEASLEY. You now refer, I believe, to the comparable sales of property in the community. Is that what you have in mind?

MR. MAY. Yes.

MR. BEASLEY. It was necessary to classify by land use, and so on, and we made a particularly careful study of the market by classifications such as residential or industrial properties. We went to the land records and developed the fact that there was a transfer, and we then pursued these transfers in determining the size of properties, and the size of land area, and the extent of improvement. We analyzed these in terms of how you would relate them to individual parcels of property within a right-of-way, and we used this market data interchangeably, but as it progressed in the close environs to the individual properties that we appraised.

MR. MAY. Do you have some idea of the number of sales you and your people looked into?

MR. BEASLEY. I believe in the Attleboro-Pawtucket area we found around 300 real estate transactions on record which we explored, and we selected probably 100 to 150 parcels of property which we felt would have a bearing on the relation of market to the right-of-way.

MR. MAY. Do you have some idea of the number of former property owners that you spoke to?

MR. BEASLEY. Well, I believe that with very few exceptions or maybe a dozen or so, I believe we found nearly everyone that was a property owner and talked with him. As a matter of fact, we went to considerable lengths and even asked that a notice be placed in the newspapers to the effect that we would like to talk to people if—we couldn't find a lot of people, I'll be frank with you, because they had moved away, or were vacant-land ownerships, and we couldn't run down the people, but by and large we covered and talked to nearly everybody we could run down. There were one or two people I would say that we didn't talk to. There may not have been any reason to talk to them, such as everything being right before us in our hands, and the record being quite clear, but especially on residential properties, and things of that type, we did go directly to the individuals.

MR. MAY. So you made a study of each of the 333 parcels involved in this project in Attleboro?

MR. BEASLEY. That is correct.

Mr. MAY. Was it as a result of that study and appraisal process and analysis that the Damort Land Corp. became the subject of further inquiry by your firm?

Mr. BEASLEY. I would direct your attention to this small graph here [indicating]. You will see that there are a number of colored lines. The lines more or less converge together and form a pattern, and then you will see toward the left of this exhibit where the lines begin to project up into high numbers. This chart is coded to value vertically and to name or parcel right-of-way horizontally. The dots represent various appraisals or estimates of values that have been compiled by the department of public works. I believe that our company's opinion is also drawn on this chart.

It would be, upon careful analysis, noted that there are fairly close groupings of factor value patterns and suddenly we find in certain properties things suddenly go completely out of balance. It was this type of thing that indicated to us perhaps a more careful analysis of the individual cases was warranted. This was more or less by number, and not by name or individual. We had no knowledge. It was a question from there to go into documentation as to just why we would have such high levels.

Mr. MAY. You mentioned the word "balance," Mr. Beasley. What does that mean?

Mr. BEASLEY. You will notice as you look at this chart that there was a pattern that formulates itself.

Mr. MAY. Could you step over and give us an example, Mr. Beasley?

Mr. BEASLEY. Yes.

Mr. MAY. For example, Damort.

Mr. BEASLEY. I would say if you observed this chart you will see going across here [indicating] there are about 25 or 30 parcels that were set up and charted. You will note that there is a balance, or within a certain range all these dots come together. Then when you come into the Damort Land Corp. property, as an example, there is a wide variance of opinions of value. You might say that these value opinions are pretty close together. When you drop into the Damort Land Corp. you begin to find a wide spread of opinions, and lines begin to form into a state of confusion.

You might go still further to adjacent property—the Jencks Adams Co.—that dropped back into a closer pattern, and all of a sudden on Charpentier's property that almost jumped off the whole chart. And back again to H. & B. Corp. and Logan, both of whom were here previously. Without having any knowledge of what was involved and what the facts were, in plotting out these line patterns we began, after our appraisal had been submitted and we were further analyzing the situation which was before us, these value patterns began to form and a more concentrated effort was directed toward what was causing this balance of value to fall apart.

Mr. MAY. Mr. Beasley, while you are there——

Mr. BLATNIK. By the balance-of-value pattern you mean this extraordinary disparity?

Mr. BEASLEY. Yes. Thank you.

Mr. CRAMER. May I ask a question, Mr. Chairman?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. That tall green line, for instance, which you said was in the Charpentier property.

Mr. BEASLEY. That is correct.

Mr. CRAMER. The green line is what the State paid. Is that right?

Mr. BEASLEY. The green line was the State's final estimate.

Mr. CRAMER. What is the figure?

Mr. BEASLEY. That was up to around \$145,000. It was revised. The original State preliminary was a blue figure of around \$50,000 or \$54,000, which jumped up and, of course, came back down and other figures went above the State; and Charpentier, I believe, was settled in the \$150,000 range.

Mr. CRAMER. What is your appraisal? The red line is your appraisal?

Mr. BEASLEY. Ours was in the \$65,000 to \$67,000 range.

Mr. CRAMER. And the blue line is what?

Mr. BEASLEY. The blue line is the State's preliminary estimate in that instance.

Mr. CRAMER. That is what is known as a line appraisal?

Mr. BEASLEY. Yes. Those were—I would have to go and look and see after having looked at hundreds and hundreds of these things—these preliminary appraisals are estimates with some documentation. Not a revised estimate, but an estimate of value which had been compiled by someone who is supposed to have experience in property values and who had gone in advance of the department of public works final appraisal and made these estimates.

Mr. CRAMER. I notice that blue line, which is the State preliminary, or the line appraisal, seems to be pretty consistent throughout with your appraisal, isn't it?

Mr. BEASLEY. Yes, it is.

Mr. CRAMER. Why is that? What do they do in Massachusetts? Do they do anything to make a studied judgment on line appraisals?

Mr. BEASLEY. I would prefer that someone from the State of Massachusetts give that answer.

Mr. CRAMER. You reviewed them, didn't you?

Mr. BEASLEY. I did.

Mr. CRAMER. What was your reaction to them?

Mr. BEASLEY. My reaction is that they made a fairly good estimate and then these circumstances that we are discussing began to set into action and then things began to change.

Mr. CRAMER. And those red bouncing balls that are way up there, practically off the chart, are these appraisers' values?

Mr. BEASLEY. That is correct.

Mr. CRAMER. The fee appraisers the State hired?

Mr. BEASLEY. That is correct.

Mr. CRAMER. Based on which the green line formed as to what the State finally paid?

Mr. BEASLEY. That is correct.

Mr. MAY. We note a couple of very significant points, as we will see later in the hearings, Mr. Chairman. We notice invariably the State's initial appraisal was not too far out of line. In essence, in general, Mr. Beasley, it was not too far from your final figure. Is that right?

Mr. BEASLEY. That is correct. They had a very close relation to market. I would say somebody went along without any direct or

indirect influence and established these appraisals and the job went on, and afterward these conditions we have discussed occurred.

Mr. CRAMER. In other words—pardon me.

Mr. MAY. As we have seen during the hearings the State didn't always stay with that initial appraisal, and invariably in these particular cases we will see that the State's initial figure skyrocketed up into the range of what the eventual fee appraiser's figures were.

Mr. CRAMER. In other words, Harney was not able to fix the line appraisals.

Mr. MAY. Apparently no attempt was being made to fix the initial appraisals.

Mr. WRIGHT. May I ask a question of the witness?

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Do all of these figures represent land takings that were actually consummated as a part of the interstate program through Attleboro?

Mr. BEASLEY. Yes. It is all part of Interstate Route 95. Yes, sir.

Mr. WRIGHT. How many different property takings are involved on that chart?

Mr. BEASLEY. I would have to count them. There look to be 30 to 50. I'm not sure exactly.

Mr. WRIGHT. Then only in two instances you found a wide disparity. Is that a fair summation?

Mr. BEASLEY. There are about four on that particular analysis. I would say that—so as not to confuse with these types of illustrations—that the range of values in properties change and although you will find a fairly close tolerance between values on certain of these properties, the proportionate variation in the class or value property is still substantial. So you have to be careful in your interpretation not to draw quick conclusions. You have to have the facts on each individual case.

Mr. WRIGHT. Valuation is not a precise science?

Mr. BEASLEY. No, sir, it is not.

Mr. WRIGHT. In all save a very few cases your conclusions were very close to those initially arrived at?

Mr. BEASLEY. We knew nothing about what had been done except we were just given right-of-way plats and told to come up with values. Afterward this is an aftermath of our work in this particular area. Mr. May even told values this morning I had no knowledge of.

Mr. MAY. It is important that everyone realize how certain properties drew attention of Mr. Beasley and really the Bureau of Public Roads and other people involved in this, Mr. Chairman. As a result of Mr. Beasley's study certain properties stood out as being suspect. We selected certain of those and looked at them in detail. It was then that we found certain people were involved in this particular property and certain things happened, and then, of course, the logical step would be to look elsewhere, at where else did these particular people work? As we have already seen, the same people that worked on Damort worked on Charpentier. Both properties are out of line on Mr. Beasley's chart. That is the way this investigation initially took off and that is when this committee became most active in the investigation in concentrating on particular properties and, of course, as a result of those properties, on particular individuals—always being

concerned, of course, with the controls supposedly being exercised on the part of the Bureau of Public Roads and the State. These things should not happen if the controls are proper.

Mr. Beasley, what was your company's fair market value estimate of the Damort Land Corp. at the time it was taken by the State?

Mr. BEASLEY. We valued the property before the highway right-of-way acquisition at \$27,400. After the right-of-way taking, at \$1,100, making a total estimate for the highway taking of \$26,300. Of the \$27,400 value, it was broken down into land, \$4,900, and building and improvements, \$22,500.

The \$1,100 after value was \$300 for land, and railroad track and other improvements, \$800.

Mr. MAY. We have to point out that the State did not take all of the Damort property. A small portion of the land and railroad track was left.

Mr. BEASLEY. That is correct.

Mr. MAY. And Mr. Webb, the owner, already testified he sold that for \$1,000. And that is what you are talking about when you talk about the remainder of that.

Mr. BEASLEY. That is right.

Mr. MAY. It is interesting you valued the remainder at \$1,100, and Mr. Webb actually sold it for \$1,000. We have already heard, of course, that the State settled on this property for \$60,000. Would you give the committee a brief description of the physical characteristics of the Damort Land Corp. properties at the time of acquisition by the State?

Mr. BEASLEY. At the time of the taking, the Damort Land Corp. property consisted of approximately 32,500 square feet of land which was relatively level, and was improved by the railroad with a track. A small frame office building, about 16 by 28 plus a lumber storage building, one story approximately 110 by 63.

I also have an exhibit here which I will term—this exhibit has a number of pictures and plats on it, and the pictures at the bottom of the exhibit are snapshots of the small buildings that were upon the property, and a fairly good clear illustration of what these improvements were.

The large photograph to the right is an aerial photograph which I secured from a local newspaper in Attleboro and which portrays the central line of Interstate Route 95.

Mr. MAY. Could you step up to the board and show us that, Mr. Beasley?

Mr. BEASLEY. This large photograph at this point portrays Interstate Route 95, and through this photograph is a kind of S-type line which is the centerline of Interstate Route 95, and in the center of the picture there is the yellow area which is the Damort Land Corp. property. Actually, the property straddles the center of the right-of-way. It goes right straight through it.

To the left or bottom of this picture is the H. & B. Corp. Mr. Roddy, who was here previously, is the owner of this property.

The Logan property is also situated right in front of this. Mr. Logan's property is here adjacent in a part of the H. & B. clip, and sold to Mr. Logan. This yellow is the Damort Land Corp.

This chart to the right is a composite aerial photograph and right-of-way print which our firm prepared as part of our work. We have

superimposed on this photograph shown in color, so as to identify the bounds of property used. The heavy black, as you see here, is heavy industrial. The lighter green is the light industrial. The purple is the single-family residential, or residential use, and the red is the business use.

The colors that I have here in little blocks—the orange illustrates real property sales in the vicinity of the right-of-way, and the blue are real estate transactions within the right-of-way at least 5 years prior to the taking.

Mr. MAY. A considerable number, Mr. Beasley.

Mr. BEASLEY. Quite a number. Yes, sir. I might add there is one small additional plat attached here which is simply a metes-and-bounds plat taken from the right-of-way survey, which indicates the exact location of buildings and improvements on the property, and also the highway superimposed across it showing where the remainder of the property was that is mentioned after the taking.

Mr. MAY. Thank you, Mr. Beasley. We may have occasion to refer to those exhibits later in the day.

Mr. Beasley, in the course of these hearings we shall be very much concerned with appraisals. Would you discuss the subject of real estate appraising at this point, please?

Mr. BEASLEY. Well, a Congressman just a minute ago made the obvious remark, which is important to me as an appraiser, which is that the appraisal is not an exact science, nor is it, of course, a simple mathematical calculation. In the strictest terms an appraisal is an estimate of value expressed in terms of dollars or the worth of a given parcel of property at a given time. Appraisals are used as a basis for buying and selling, negotiating, and insuring properties; and are also used for tax and depreciation purposes and estate purposes, and for planning.

The reference to the term "local appraiser" has to do with individuals who are engaged in various trades related to real property and who also offer themselves as appraisers in communities. There are also certain people who devote themselves to the full-time job of appraising, and do nothing else but appraise property.

It has been my personal experience in reviewing appraisals for the U.S. Bureau of Public Roads in various parts of the country, to observe there are several types of individuals, and these are the combination real estate broker-appraiser, who is a man or a woman who does not give full time to this work. Mostly their reports are expressions of value based upon their judgment and their daily contact with the market.

The second type which I just mentioned is the individual who gives full time to his work and who writes a documented, well-supported report.

The problem in appraising is complex. The problems are complex. There is a lack of fundamental knowledge of the appraisal process on the part of many people who hold themselves in the profession and, of course, this is an area of education which is being attacked by all of the appraisal professions.

We also have the individual who has no knowledge of the appraisal process, or any knowledge of the market itself, and unless his report is reviewed by someone who is experienced in the field of appraising you will find that his values can become very controversial, or can even

be financially disastrous to some. I have often felt it is inevitable that in large public improvement projects there would be a certain number of people who would render appraisal services who are not qualified. I have also observed in most instances where a person is unqualified, that his work sooner or later shows up, and a good reviewer will eliminate him from appraisal assignments.

Mr. MAY. Excuse me, Mr. Beasley. You say that good administration would soon weed out the unqualified?

Mr. BEASLEY. There would have to be some authority, contracting and reviewing authority, in large projects. The reports should be reviewed and classified and the quality of the work analyzed, and the persons who are rendering this service should be periodically checked to see that their work is effective.

Mr. MAY. So this would, of course, come out through a proper review of the appraisal?

Mr. BEASLEY. That is correct.

Mr. MAY. Mr. Beasley, what process should a good appraiser use? What should he do?

Mr. BEASLEY. Well, I have still another exhibit which is entitled "The Appraisal Process." I would again, if I may, go to that. This chart is titled "The Appraisal Process." I might say it comes directly out of a book and simply serves my purpose to use in this particular instance. However, it does portray in quick form the appraisal process, which basically is the identification of the problem and the acquisition of data and analysis of that data, and then the market data approach, which has become quite important as we review the work here. In this area there is the analysis of comparable sales, and classification of these sales with the names of persons and date it was sold, and so on, and its relationship to market.

Then you have the income approach, and this would have to do with the income capitalized to value, and then you would have the cost approach.

These three approaches usually are followed, and the weighted conclusion, after following these three approaches, is correlated and a final conclusion is a combination of all these facts, weighted, checked, and with the good judgment of the individual who makes the conclusion.

Mr. MAY. So, Mr. Beasley, a good appraiser on a given property would use all three approaches if, of course, all three approaches are applicable?

Mr. BEASLEY. That is correct.

Mr. MAY. The market data approach, the cost approach, and the income approach.

Mr. BEASLEY. That is correct.

Mr. MAY. Are you going to describe those approaches?

Mr. BEASLEY. Yes. I would say in the market data approach that one of the most persuasive bits of evidence in appraising real property is the market data approach because you take the premise that no prudent person pays more than the amount necessary to gain possession. Of course, this is constant with the principle of substitution. The market data approach is a process which is a systematic and orderly procedure for gathering facts and weighting them. You gather the sales from many sources, as I mentioned, the most reliable being the reported deed costs. Then you have to examine these

properties and determine just exactly what the sale consisted of and from your analysis of the physical characteristics you determine the price paid by verification, and the general economic conditions surrounding the sale. Then you begin to formulate your opinions for comparison to the individual property that you might be appraising.

Under the income approach you might say the income or capitalization approach is really a method of discounting because capitalization of income is a discounting process. You would estimate, under the income approach, the amount of future gross income you could expect and the estimate of the expenses, and determine your net income. You would estimate the probable duration of this income. Then, of course, you would select your capitalization rate and apply the various techniques of capitalization that would be appropriate and come up with a conclusion under your income approach.

The cost approach, which is usually the highest value found, is generally developed by appraising the land using comparable sales and assuming it is vacant land. You estimate the current cost of replacement of improvements and determine the amount of depreciation and then arrive at your correlation of value under this approach.

Then with these three approaches you have figures before you testing the value in three different directions, and in your judgment, with your facts, you conclude a fair market value.

MR. MAY. Thank you very much, Mr. Beasley. I would like to point out when we began this investigation and talked to certain appraisers about their work, they seemed to sit back very comfortably and say, "That was my opinion. You might criticize my report, but that was my opinion and I will stay with it." But we learned from hearing you, Mr. Beasley, that appraisal work is a little bit more than just somebody's opinion.

We have heard the term used, "windshield appraisals." We noticed those people who were a little older would say, "Horseback appraisals." This program cannot stand on windshield appraisals or horseback appraisals, can it, Mr. Beasley?

MR. BEASLEY. No, sir. As a matter of fact, it is firmly established that there are specifications, and if these specifications are followed and reports are properly documented, there should be no wide disparity of value. They should be in close tolerance with each other.

MR. MAY. It has to be an obtaining of the facts.

MR. BEASLEY. Absolutely.

MR. MAY. Mr. Beasley, did you prepare a review of all the appraisals made on behalf of the Commonwealth pertaining to the Damort Land Corp. property?

MR. BEASLEY. Yes. I was asked to review the content of these various appraisals and to determine whether or not they conformed to department of public works specifications, and whether they met the criteria of the U.S. Bureau of Public Roads.

MR. MAY. So you reviewed the appraisals of Mr. Hopkins, the departmental appraiser, Mr. Joseph L. Schwartz, the fee appraiser, and Mr. Ernest Collins, fee appraiser, and Mr. Charles H. Lawton, Jr., fee appraiser?

MR. BEASLEY. Yes, sir, I did.

MR. MAY. Thank you, Mr. Beasley. Mr. Beasley, would you step aside for just a moment and we will call upon you?

Mr. CRAMER. You are going to call him back this afternoon then?

Mr. MAY. Yes, sir.

Mr. BLATNIK. Mr. Ernest Collins, Swansea, Mass., treasurer, French & Davol. Mr. Collins, will you please take the witness chair? Will you raise your right hand? Do you solemnly swear the testimony you will give this subcommittee will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. COLLINS. I do.

Mr. BLATNIK. Mr. Collins, will you, for the record, give your full name and home residence and profession?

**TESTIMONY OF ERNEST COLLINS, TREASURER, FRENCH & DAVOL,
ACCOMPANIED BY JOHN O'DONOGHUE, COUNSEL**

Mr. COLLINS. Ernest Collins, 903 Gardens Wick Road, Swansea, Mass. I am engaged in real estate, insurance, and appraisal business.

Mr. BLATNIK. Would you identify your associate and counsel?

Mr. COLLINS. This is Mr. John O'Donoghue, who is my lawyer.

Mr. O'DONOGHUE. John O'Donoghue of the Massachusetts bar, 60 Rock Street, Fall River, Mass.

Mr. BLATNIK. Mr. Constandy will question you.

Mr. CONSTANDY. Mr. Collins, what is the name of the firm under which you do business?

Mr. COLLINS. French & Davol.

Mr. CONSTANDY. And that is a general insurance and real estate firm?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. What is your connection with the firm?

Mr. COLLINS. My connection?

Mr. CONSTANDY. Yes.

Mr. COLLINS. My title is treasurer.

Mr. CONSTANDY. Are you a licensed real estate insurance broker?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. In the Commonwealth of Massachusetts?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. For how long have you been making real estate appraisals?

Mr. COLLINS. Since 1950; I began to do work connected with the Federal Government—the Veterans' Administration.

Mr. CONSTANDY. Had you done appraisals prior to that?

Mr. COLLINS. A few.

Mr. CONSTANDY. And in 1950 you began doing appraisals for the Veterans' Administration. Is that correct?

Mr. COLLINS. That is correct.

Mr. CONSTANDY. And that was in connection with sales and purchases of homes?

Mr. COLLINS. All sorts of properties; but in the main, residences.

Mr. CONSTANDY. For whom else did you do appraisals?

Mr. COLLINS. The Commonwealth of Massachusetts.

Mr. CONSTANDY. Is that the department of public works?

Mr. COLLINS. The department of public works, yes.

Mr. CONSTANDY. In addition to the department of public works have you appraised for the FHA?

Mr. COLLINS. I have qualified to appraise for FHA, but I have never done work. I will read some of them. I appraised for the Multiple Listings Service in Fall River.

Mr. CONSTANDY. What is that?

Mr. COLLINS. The Multiple Listings Service is a grouping of real estate people, and they have committees who go out to appraise properties for listings among all the brokers who belong to the service.

Mr. CONSTANDY. For what purpose are those appraisals made?

Mr. COLLINS. To establish a reasonable market value.

Mr. CONSTANDY. Yes, sir. For what purpose?

Mr. COLLINS. To sell the house.

Mr. CONSTANDY. It is not made for the owner, is it?

Mr. COLLINS. It is made in the interests of the owners—to give what we believe to be a realistic and practical and reasonable market value—to establish the price.

Mr. CONSTANDY. To help establish the price?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did there come a time when you began to do appraisals for the department of public works?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. When was that?

Mr. COLLINS. In 1954.

Mr. CONSTANDY. And prior to that time you had the experience you related to us now. Is that correct?

Mr. COLLINS. Yes.

Mr. CONSTANDY. How did it come you began to do appraisals for the department?

Mr. O'DONOGHUE. Mr. Collins is hard of hearing. Will you speak louder, please?

Mr. CONSTANDY. How did it come you began to do appraisals for the department of public works?

Mr. COLLINS. A man walked into my office one day and introduced himself. His name was Charles Fitch. He told me he was with the department of public works. I believe that they came into some work down at Fall River, or in the Fall River area and had gone to all of the banks in the city, and all of the banks had recommended me. He said, "You are not the only one that was recommended but," he said, "every single bank did recommend you. And would you be interested in doing work for the State?" I said that I would.

Mr. CONSTANDY. Prior to that time had you made appraisals on behalf of the banks in town?

Mr. COLLINS. On behalf of who?

Mr. CONSTANDY. The banks?

Mr. COLLINS. No. No. Not for banks, but most of my work was in connection with Veterans' Administration things, and the banks were concerned. I was constantly there. They knew that I was involved in that work.

Mr. CONSTANDY. Would you go on, please?

Mr. COLLINS. Yes. He said I had been recommended by every one of the banks. He said, "You are not the only name that has been recommended by you're the only one every bank recommended." He said, "Would you care to recommend anybody yourself?" And I did. He then said, "If you write a letter into the department and state

your qualifications, perhaps you will receive some work." I did that, and within a short time I got three assignments and began to do work for the State.

Mr. CONSTANDY. Mr. Collins, our records indicate you received your first assignment from the department of public works in February 1954, and thereafter, until May 9, of 1961, you had been assigned a total of 128 parcels, and received from the department of public works in connection with these appraisals the sum of \$19,200, \$500 of which was for testimony which you gave in connection with those particular takings. Is that figure about right?

Mr. COLLINS. I am willing to accept it. I have never tallied it up.

Mr. CONSTANDY. That comes from the department of public works.

Mr. COLLINS. I wouldn't question it.

Mr. CONSTANDY. What percentage of the business that you did in 1960 would you say was represented by appraisals for the department of public works, of your real estate business?

Mr. COLLINS. A good percentage. It would be difficult for me to try to name a figure.

Mr. CONSTANDY. Would you say half?

Mr. COLLINS. Yes, I think I would.

Mr. CONSTANDY. Would it be more than half?

Mr. COLLINS. I would think half would be somewhere near it.

Mr. CONSTANDY. There came a time, Mr. Collins, when you were assigned to appraise certain parcels in the Attleboro area. Is that correct?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Mr. Chairman, we have a letter dated November 4, 1959, from the Department of Public Works addressed to Mr. Ernest Collins in Fall River, assigning certain parcels of layout 4877 to him for appraisals. The parcels were assigned and are eight in number, and are properties of Charles and Helen Logan, the H. & B. Building Corp., Louise L. Charpentier, Jencks Adams Co., the Damort Land Corp., Donald W. and Mary Ellen Boardman, Omar and Charles C. Martel, and the estate of Alfred James Holden. Is that correct?

Mr. COLLINS. Yes, I believe that is correct.

Mr. CONSTANDY. Prior to the assignment of these parcels, had you been assigned to appraise any industrial property?

Mr. COLLINS. Industrial properties?

Mr. CONSTANDY. Yes.

Mr. COLLINS. By the department?

Mr. CONSTANDY. Let's begin with the department. By the department?

Mr. COLLINS. I have appraised commercial properties, but I am not altogether sure I appraised an industrial property for the State.

Mr. CONSTANDY. Had you appraised an industrial property at that time for anyone else?

Mr. COLLINS. I have appraised industrial properties. Yes.

Mr. CONSTANDY. At that time, on November 4, 1959?

Mr. COLLINS. I believe so.

Mr. CONSTANDY. Do you recollect which particular properties?

Mr. COLLINS. No. No, I don't. I haven't given it any thought.

Mr. CONSTANDY. Would you say your experience at that time was limited more to residential property?

Mr. COLLINS. Very much so.

Mr. CONSTANDY. Would you classify the property of Mr. Logan in Attleboro as industrial?

Mr. COLLINS. Yes, I do.

Mr. CONSTANDY. The H. & B. Building Corp.?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Louise Charpentier?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Jencks Adams?

Mr. COLLINS. That is industrial or commercial. I would call it commercial myself.

Mr. CONSTANDY. And Damort?

Mr. COLLINS. I would call it commercial.

Mr. CONSTANDY. How about Boardman?

Mr. COLLINS. That was a residence, as I remember it.

Mr. CONSTANDY. As was Martel?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And Holden, that was a residence, too, wasn't it?

Mr. COLLINS. Yes.

Mr. CONSTANDY. So prior to this assignment you cannot recollect ever having done industrial appraisals, but you believe you did, and at this moment you are now assigned to five which are either industrial or commercial?

Mr. COLLINS. That is correct.

Mr. CONSTANDY. The fee listed in the letter of assignment to you by the department of public works in connection with making these eight appraisals was \$2,050. Is that correct?

Mr. COLLINS. That is correct.

Mr. CONSTANDY. Do you know Mr. Joseph L. Schwartz?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Do you know him to be a fee appraiser also engaged by the department of public works?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Do you know that Mr. Schwartz was assigned to the identical properties you were assigned to in Attleboro?

Mr. COLLINS. I know that he was. Yes.

Mr. CONSTANDY. I direct your attention to the Damort property. Have you ever engaged in conversation with Mr. Schwartz in connection with the Damort property?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Could you tell us about that conversation?

Mr. COLLINS. Could I have a little latitude to do it?

Mr. CONSTANDY. I beg your pardon?

Mr. COLLINS. May I have a little latitude to do it?

Mr. CONSTANDY. Help yourself.

Mr. COLLINS. All right. I had those appraisals in Attleboro and had been over there a number of times. One Saturday morning I got a call from Mr. Schwartz, who knew that I had the work in Attleboro, and he had been over, as I gathered it, to get into a couple of the properties, and could not get in. They were locked. Charpentier was one, and one of the residences. I don't remember the name, but it might be Holden, which was also vacant and locked. He called me and asked me if I know how he could get into those places. I told him how I could get into the places.

Mr. CONSTANDY. May I interrupt you, Mr. Collins?

Mr. COLLINS. Yes. Surely.

Mr. CONSTANDY. Sometime prior to this you and I had conversations relative to this same matter, did we not? Is that not true?

Mr. COLLINS. Yes, we had.

Mr. CONSTANDY. You recollect your conversation at that time?

Mr. COLLINS. In the main.

Mr. CONSTANDY. I took notes at that time. I would like to draw your attention to the fact that at the time we discussed your visit to Attleboro in connection with making your appraisals, and your contact with Mr. Schwartz in connection with making your appraisals, you stated that your conversation, or, rather, your contact with Mr. Schwartz in connection with the Damort property was limited to the manner in which you could obtain the key. Is that correct?

Mr. COLLINS. To the Damort property?

Mr. CONSTANDY. Yes.

Mr. COLLINS. I don't believe that is correct.

Mr. CONSTANDY. You also mentioned at one time you had gone with Mr. Schwartz to visit the Charpentier property.

Mr. COLLINS. That is right.

Mr. CONSTANDY. And at that time you told us Mr. Schwartz knew the caretaker and was able to get the key. Is that correct?

Mr. COLLINS. No, that is not correct. I knew the caretaker.

Mr. CONSTANDY. You knew the caretaker?

Mr. COLLINS. That is right.

Mr. CONSTANDY. We are in error then on what we understood prior to today?

Mr. COLLINS. You are in error.

Mr. CONSTANDY. And the testimony you are giving here now before the committee is the truth?

Mr. COLLINS. As it was then. You must have misunderstood.

Mr. CONSTANDY. Perhaps. Now, you called Mr. Schwartz, or did he call you on this Saturday?

Mr. COLLINS. He called me.

Mr. CONSTANDY. What did Mr. Schwartz say to you?

Mr. COLLINS. "How could I get into the Charpentier place, for one, and the residence for another?" I tried to tell him over the telephone and he asked me, "Are you busy?" He said, "Can you ride over with me?" You have to go to a gas station to get the key for one of the residences. He said, "Are you busy?" I said, "Not especially." He said, "Will you ride over with me?" I said, "OK." I would and I did.

Mr. CONSTANDY. And before you leave that, did Mr. Schwartz come and pick you up?

Mr. COLLINS. Yes, he did.

Mr. CONSTANDY. Did he come in his car?

Mr. COLLINS. I believe it was his car.

Mr. CONSTANDY. Did he come alone?

Mr. COLLINS. No, he was not alone.

Mr. CONSTANDY. Who was with Mr. Schwartz?

Mr. COLLINS. Mr. Jacobs.

Mr. CONSTANDY. Mr. William Jacobs?

Mr. COLLINS. Mr. William Jacobs.

Mr. CONSTANDY. William M. Jacobs?

Mr. COLLINS. I don't know the middle name.

Mr. CONSTANDY. Did you first meet Mr. Jacobs on that occasion?

Mr. COLLINS. I had met him prior to that.

Mr. CONSTANDY. When?

Mr. COLLINS. I had seen him once, I believe, in Seekonk.

Mr. CONSTANDY. S-e-e-k-o-n-k?

Mr. COLLINS. S-e-e-k-o-n-k.

Mr. CONSTANDY. Can you tell us the circumstances under which you met Mr. Jacobs the first time?

Mr. COLLINS. The first time?

Mr. CONSTANDY. Yes.

Mr. COLLINS. That again was Mr. Schwartz called me on the telephone. It must have been a Friday night, because again he wanted to meet me, although this is the first time—he wanted to meet me in Seekonk on Saturday, and asked me if I could meet him over there.

Mr. CONSTANDY. Did he tell you why?

Mr. COLLINS. No, he didn't tell me why.

Mr. CONSTANDY. He simply stated he wanted to meet you in Seekonk on the next day?

Mr. COLLINS. That's right. If it was convenient. And I said it would be all right. I went to Seekonk and we were supposed to meet in a trailer used as a temporary quarters for a contractor at, let's say, 1 o'clock. He was not there. I waited 10 or 15 minutes and left a note and said I'll be across the street, and told him where I was. And I waited over there for a half an hour and didn't hear anything from him, so I called him on the telephone and he said, "Well, I can't get there yet," he said, "but I'll be there any minute." So that was that. And I waited perhaps another half an hour or 45 minutes and then went back to the trailer, and Mr. Schwartz was sitting in the car with Mr. Jacobs, and that's the first time that I met him.

Mr. CONSTANDY. Having met him in Seekonk, what did you then do?

Mr. COLLINS. We rode around the general area. They had evidently been doing it for some time before I got there. They rode around the general area of all the parcels that were being taken. They were all in a triangle. They rode around there. I was with them for perhaps 10 minutes.

Mr. CONSTANDY. As you rode around the general area?

Mr. COLLINS. Yes.

Mr. CONSTANDY. What was it that Mr. Schwartz wanted you to do when you got to Seekonk?

Mr. COLLINS. I don't know.

Mr. CONSTANDY. You don't tell me he asked you to meet him at Seekonk and you waited first a half an hour, and then you waited an additional half an hour, and then you drove around the project with Mr. Schwartz and Mr. Jacobs, and you left without finding out why Mr. Schwartz had put you to this trouble?

Mr. COLLINS. I didn't know why he asked me at the beginning, and when it was all over it was not clear to me why he had wanted me to go over there.

Mr. CONSTANDY. It's kind of a curious meeting then, isn't it?

Mr. COLLINS. I thought so.

Mr. CONSTANDY. Did you have assignments in Seekonk?

Mr. COLLINS. Yes, I did.

Mr. CONSTANDY. Did Mr. Schwartz have assignments in Seekonk?

Mr. COLLINS. Yes, he did.

Mr. CONSTANDY. Did Mr. Jacobs have assignments in Seekonk?

Mr. COLLINS. That I don't know.

Mr. CONSTANDY. That was not discussed?

Mr. COLLINS. I don't know.

Mr. CONSTANDY. Did you have, as one of your assignments in Seekonk, the property known as the Forest Hills Nursery?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did Mr. Schwartz have the same property?

Mr. COLLINS. Yes, he did.

Mr. CONSTANDY. Do you know whether Mr. Jacobs had any connection with that property?

Mr. COLLINS. I have since learned he did, sir. I didn't know it then.

Mr. CONSTANDY. What did you since learn?

Mr. COLLINS. I have since learned he was the appraiser for the other side.

Mr. CONSTANDY. For the other side?

Mr. COLLINS. The petitioner, or the plaintiff—the property owner.

Mr. CONSTANDY. As the three of you drove around in a car, you had an interest in being there?

Mr. COLLINS. Yes, I did.

Mr. CONSTANDY. Mr. Schwartz had in interest in being there?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And now you found out Mr. Jacobs had an interest in being there?

Mr. COLLINS. I didn't know it then.

Mr. CONSTANDY. Did you speak?

Mr. COLLINS. What was that?

Mr. CONSTANDY. Did you speak while you drove around in the car?

Mr. COLLINS. Yes.

Mr. CONSTANDY. About what?

Mr. COLLINS. We talked about the land in general. We drove to one parcel where a man had been selling lots, and looked at a peat bog, I think, and the rest of the conversation was pretty general.

Mr. CONSTANDY. Do you know whether Mr. Schwartz is related to Mr. Jacobs?

Mr. COLLINS. Yes. He is his brother-in-law.

Mr. CONSTANDY. Did you visit the Forest Hills Nursery property that day?

Mr. COLLINS. No; I did not visit any particular property.

Mr. CONSTANDY. Whose property was it where the man was selling off lots?

Mr. COLLINS. That, I believe, was the Butterworth property.

Mr. CONSTANDY. Were you assigned to appraise the Butterworth property?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Do you know whether Mr. Schwartz was assigned to that?

Mr. COLLINS. Yes, he was.

Mr. CONSTANDY. Do you know whether Mr. Jacobs had any connection with the Butterworth property?

Mr. COLLINS. No, I don't.

Mr. CONSTANDY. Have you since learned anything about that property and Mr. Schwartz?

Mr. COLLINS. No, I did not.

Mr. CONSTANDY. Whose peat bog was it?

Mr. COLLINS. There were two peat bogs in those assignments. One of them belonged to the Butterworth people. There was another peat bog that was a part of the Bianchi Florists property.

Mr. CONSTANDY. Were you assigned to the Butterworth property?

Mr. COLLINS. Yes, I was.

Mr. CONSTANDY. Were you assigned to the Bianchi Florists property?

Mr. COLLINS. Yes, I was.

Mr. CONSTANDY. Was Mr. Schwartz assigned to either of them?

Mr. COLLINS. Both of them.

Mr. CONSTANDY. Do you know whether Mr. Jacobs had any connection with either of the properties?

Mr. COLLINS. No, I don't.

Mr. CONSTANDY. Have you since learned anything about that?

Mr. COLLINS. No, I haven't.

Mr. CONSTANDY. Could we go back to the lots the man was selling off. They would be owned by Butterworth. Is that correct?

Mr. COLLINS. Yes. This is to the best of my recollection. I do not have—I haven't my files here.

Mr. CONSTANDY. Did you get out of the car?

Mr. COLLINS. What is that?

Mr. CONSTANDY. Did you get out of the car?

Mr. COLLINS. I don't know that we did. I don't believe we did. No.

Mr. CONSTANDY. Did you stop there at the property?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did you have a discussion?

Mr. COLLINS. A sharp discussion.

Mr. CONSTANDY. Could you recollect what the nature of the discussion was?

Mr. COLLINS. The property owners were in the automobile.

Mr. CONSTANDY. The property owner was in the automobile, too?

Mr. COLLINS. Yes, and he was talking about this lot and that lot, and what he received for this lot and that lot, and so forth and so on, and how it was platted, and so forth and so on. That was the extent of the conversation.

Mr. CONSTANDY. The lots he was pointing out to you had been sold to other people. Is that correct?

Mr. COLLINS. That is right.

Mr. CONSTANDY. And he was indicating to you the value that he had received for the lots he had sold. Is that right?

Mr. COLLINS. He was talking about prices he had received.

Mr. CONSTANDY. Yes. Well, then did you drive to the peat bog?

Mr. COLLINS. No, I don't believe we did. I don't think so.

Mr. CONSTANDY. The peat bog was not divided into lots, was it?

Mr. COLLINS. No, it was not.

Mr. CONSTANDY. That was to be considered something different from building lots, wasn't it?

Mr. COLLINS. Oh, yes.

Mr. CONSTANDY. Is there some relationship between the property Mr. Butterworth had that was divided into lots, and other property he had being taken by the State?

Mr. COLLINS. Well, what we were looking at was our part of the taking.

Mr. CONSTANDY. Not the lots?

Mr. COLLINS. Yes. Lots, and the peat bog too. He owned a good portion of the land in this triangle.

Mr. CONSTANDY. When you visited Forest Hills—or did you——

Mr. COLLINS. Not at that time, no.

Mr. CONSTANDY. You did not visit Forest Hills for——

Mr. COLLINS. No, not at the time you are referring to now. When I visited—you mentioned this occasion?

Mr. CONSTANDY. On this occasion.

Mr. COLLINS. Yes—no, I told you all about that occasion.

Mr. CONSTANDY. Was there any discussion of value?

Mr. COLLINS. No.

Mr. CONSTANDY. Not by anyone?

Mr. COLLINS. No.

Mr. CONSTANDY. Well, this, of course, is the thing that primarily motivates everybody to be there. You're to be concerned with the property, to make an appraisal for the State?

Mr. COLLINS. Yes, that is correct.

Mr. CONSTANDY. And Mr. Schwartz is there for the same reason?

Mr. COLLINS. I wasn't trying to do any appraisal work that particular day.

Mr. CONSTANDY. You were simply visiting?

Mr. COLLINS. I simply responded to a telephone call, requesting me to go over there, and when I got there he wanted to ride around the property, which I did.

I wasn't there to try to do any detailed appraisal work.

Mr. CONSTANDY. That was the first time you met Mr. Jacobs?

Mr. COLLINS. That's the first time.

Mr. CONSTANDY. And the next time you met Mr. Jacobs would be on the Saturday that you were to drive to Attleboro with Mr. Schwartz to look at some properties there?

Mr. COLLINS. That's right.

Mr. CONSTANDY. Did you drive Mr. Jacobs' car or Mr. Schwartz' car——

Mr. COLLINS. I don't remember. I don't know.

Mr. CONSTANDY. You went in one or the other?

Mr. COLLINS. It was one or the other. It wasn't mine.

Mr. CONSTANDY. All three of you rode together?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And when you got to Attleboro what did you do? Where did you go first?

Mr. COLLINS. First we went to the shop to see the property. And I went two houses away. The people knew me because I had been there on other occasions.

Mr. CONSTANDY. Whose house was that?

Mr. COLLINS. I don't know the name, now, but it was the caretaker of the shop who had the property.

Mr. CONSTANDY. Did you get a key?

Mr. COLLINS. I got the key. The caretaker happened to be there that day, and he went over and opened the property and they went through the property.

Mr. CONSTANDY. When the caretaker came back to the property he opened it. Is that right?

Mr. COLLINS. That's right.

Mr. CONSTANDY. Mr. Jacobs is there?

Mr. COLLINS. Yes, he was.

Mr. CONSTANDY. Mr. Schwartz is there?

Mr. COLLINS. Yes.

Mr. CONSTANDY. The caretaker is there?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did he stay?

Mr. COLLINS. Yes, he stayed throughout the entire time.

Mr. CONSTANDY. Now, what did you do when you went on the property?

Mr. COLLINS. I talked to the caretaker.

Mr. CONSTANDY. About what?

Mr. COLLINS. Things in general. Nothing in particular. While they went—

Mr. CONSTANDY. Background data for your appraisal?

Mr. COLLINS. No, not with the caretaker.

Mr. CONSTANDY. What did Mr. Schwartz do?

Mr. COLLINS. He was inspecting the property.

Mr. CONSTANDY. Did he make notes?

Mr. COLLINS. I presume so.

Mr. CONSTANDY. Well, did you see him make notes?

Mr. COLLINS. I don't know that I actually saw him make notes. He must have been making notes. That's what he was there for.

Mr. CONSTANDY. He must have been, but you didn't notice him making notes?

Mr. COLLINS. Not particularly, no.

Mr. CONSTANDY. Did he measure it?

Mr. COLLINS. I don't believe he did.

Mr. CONSTANDY. Did you?

Mr. COLLINS. I measured the property a couple of times.

Mr. CONSTANDY. No, I said he viewed?

Mr. COLLINS. He viewed, yes. Yes.

Mr. CONSTANDY. What did Mr. Jacobs do?

Mr. COLLINS. He was with Mr. Schwartz. I don't know what he did except walk around with him.

Mr. CONSTANDY. Did they engage in conversation?

Mr. COLLINS. I presume they did.

Mr. CONSTANDY. Did you hear them engage in conversation?

Mr. COLLINS. I wasn't—I was talking with the caretaker about all the time they were in there.

Mr. CONSTANDY. And then there came a time when they completed their viewing of the property?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Then what happened?

Mr. COLLINS. They left that property and he went to the Damort property.

Mr. CONSTANDY. Is that nearby?

Mr. COLLINS. Yes, very, very nearby.

Mr. CONSTANDY. Did you walk over to the Damort property?

Mr. COLLINS. Yes. The three——

Mr. CONSTANDY. The three of you?

Mr. COLLINS. I told him again where to get the key. There was a little dairy in the front, which was a part of the property. I walked in there with him. I don't know that I walked any other place with him on that property.

Mr. CONSTANDY. Try to think back. You got the key from the dairy?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And what is your best recollection of the moment——at the moment, of what you did after you got the key from the dairy?

Mr. COLLINS. I didn't get it. Mr. Schwartz got the key. I just told him——

Mr. CONSTANDY. You told him where it was?

Mr. COLLINS. The manager knew me. I had been there, and he knew what I was there to do, to do an appraisal.

Mr. CONSTANDY. Is that what you were there to do?

Mr. COLLINS. Not then. I had been there previously.

Mr. CONSTANDY. I see. Having gotten the key, what did Mr. Schwartz do?

Mr. COLLINS. He inspected the balance of the property; the larger part of it was the big lumber warehouse which he went through.

Mr. CONSTANDY. He opened the door?

Mr. COLLINS. Yes, I presume so.

Mr. CONSTANDY. Went inside?

Mr. COLLINS. I don't know—I don't remember that.

Mr. CONSTANDY. Were you with him?

Mr. COLLINS. I don't think I was.

Mr. CONSTANDY. You waited at the dairy?

Mr. COLLINS. I think that's where I was, yes.

Mr. CONSTANDY. Mr. Schwartz, what did he do?

Mr. COLLINS. Well, isn't that——

Mr. CONSTANDY. I mean, Mr. Jacobs. Excuse me.

Mr. COLLINS. I think he was with Mr. Schwartz.

Mr. CONSTANDY. Was Mr. Schwartz measuring?

Mr. COLLINS. I didn't see him.

Mr. CONSTANDY. Did you notice whether he took notes?

Mr. COLLINS. No, I didn't notice whether he took notes.

Mr. CONSTANDY. He just looked around?

Mr. COLLINS. I don't know what he was doing. I wasn't watching what he was doing.

Mr. CONSTANDY. What happened after that?

Mr. COLLINS. They went to one—let's see: He went through a couple of the houses—we went to the gasoline station to get the key for the locked-up house. And they went through that.

Mr. CONSTANDY. What did you do?

Mr. COLLINS. I waited for them.

Mr. CONSTANDY. Where?

Mr. COLLINS. I think, in the car that time.

Mr. CONSTANDY. And they went in the house?

Mr. COLLINS. Not to my recollection.

Mr. CONSTANDY. They went around the house?

MR. COLLINS. It was—we were right outside the house. I was either in the automobile or waiting for them.

MR. CONSTANDY. Had you made your appraisal already on Charpentier at the time you visited—

MR. COLLINS. I had done a great deal of the work on it.

MR. CONSTANDY. You hadn't completed it?

MR. COLLINS. I don't know that I had. I am not certain of that.

MR. CONSTANDY. Had you completed your appraisal on the Damort property?

MR. COLLINS. I don't believe I had finished any of the appraisals.

MR. CONSTANDY. You completed your fieldwork?

MR. COLLINS. I had done a good deal of it, although I did more later.

MR. CONSTANDY. And it was necessary to do something else before you finished in the field?

MR. COLLINS. I did do more work and made other visits after that.

MR. CONSTANDY. What would you do on these visits after that?

MR. COLLINS. Well, if you are an appraiser, you would understand this.

MR. CONSTANDY. Well, I am not. I want that made very clear. I am not an appraiser.

MR. COLLINS. When you are doing a lot of assignments at one time you take notes as well as you can, and if you go into four or five places in one day some things can run together in your head that you want to clear up in your mind. You go back. Sometimes you go back two or three times. I often have done it.

MR. CONSTANDY. In between the times you visited the Charpentier property on that day and the Damort property and the Gordon house, was there any discussion as to the appraisals that would be made by you?

MR. COLLINS. None at all.

MR. CONSTANDY. With Mr. Schwartz?

MR. COLLINS. No, sir.

MR. CONSTANDY. Did you reach any conclusions as to why Mr. Jacobs was there?

MR. COLLINS. I presume he was there to help Mr. Schwartz. He was an experienced appraiser. He was his brother-in-law. That was an assumption on my part.

MR. CONSTANDY. Was anything said that day which leads you to believe—

MR. COLLINS. No.

MR. CONSTANDY. He was helping Mr. Schwartz?

MR. COLLINS. No, that is just something I assumed.

MR. CONSTANDY. After you finished at the Gordon house what did you do?

MR. COLLINS. After we finished Damort, did you say?

MR. CONSTANDY. No, the Gordon house, where did you go after that?

MR. COLLINS. We went to the Martel house, I think.

MR. CONSTANDY. Did you drive there?

MR. COLLINS. Or walked. They were adjacent almost.

MR. CONSTANDY. Did the three of you go in the Martel house?

MR. COLLINS. I introduced them to Mrs. Martel.

MR. CONSTANDY. You did not answer my question. Did the three of you go into the Martel house?

MR. COLLINS. I did. Yes, the three of us went in.

MR. CONSTANDY. Together?

MR. COLLINS. Yes, that's right.

MR. CONSTANDY. I think we found another place where I erred in recording our earlier conversation.

You were quite explicit, to my recollection, that Mr. Jacobs and Mr. Schwartz went into the Martel house together. You remained in the car. Sometime thereafter you went into the Martel house. Am I in error again?

MR. COLLINS. I believe that you are.

MR. MAY. Mr. Collins, he is not. Mr. Constandy and I talked with you in your office in Fall River.

We talked about this very slowly and clearly. We both took detailed notes. There is not the least question of what you said to us on that day.

You talked about the Martel property and you said Schwartz and Collins went into the house and you did not.

MR. COLLINS. Have you talked with other people on the staff about it? They asked me about it.

MR. MAY. Mr. Collins, I was there. Mr. Constandy was there, and we recorded it in front of you and took detailed notes. There is not any question about it. I want the record to show it.

MR. COLLINS. That isn't my recollection of what I told you. And my memory of it is that we walked into the house together.

MR. CONSTANDY. You are now telling the truth?

MR. COLLINS. I intend to tell the truth every time I talk with either you or any people connected with your investigating staff.

MR. CONSTANDY. Fine. Nothing happened in the Martel house that caused you to feel that you didn't want to be a part of it, did it?

MR. COLLINS. Not to my knowledge, nothing happened, no.

MR. CONSTANDY. The three of you went in together?

MR. COLLINS. That's right.

MR. CONSTANDY. You say you introduced Mr. Jacobs and Mr. Schwartz to whom?

MR. COLLINS. The lady, Mrs. Martel.

MR. CONSTANDY. And how did you describe them? How did you introduce them?

MR. COLLINS. Just introduced—I don't know whether I introduced Mr. Jacobs, but I introduced Mr. Schwartz. I had been there previously. She knew who I was. I said "this is Mr. Schwartz; he is here to make an appraisal of your house, just like I did." That was about that.

MR. CONSTANDY. You cannot recollect any mention of Mr. Jacobs?

MR. COLLINS. I don't really remember, no.

MR. CONSTANDY. It is kind of hard to miss him standing there, is it not? A big man—

MR. COLLINS. I might have introduced him. Maybe Mr. Schwartz introduced him. I don't know. And maybe he wasn't introduced, I don't know.

MR. CONSTANDY. Did you have conversation with Mrs. Martel after you got there?

Mr. COLLINS. I had no particular conversation. Mr. Martel was not there. I don't believe I ever saw Mr. Martel.

Mr. CONSTANDY. After you got there what did you do?

Mr. COLLINS. I didn't do anything except wait for Joe to finish doing what he had to do.

Mr. CONSTANDY. Where did you wait?

Mr. COLLINS. Sort of out in the—sort of a dining area of a kitchen, as I remember it.

Mr. CONSTANDY. You talked——

Mr. COLLINS. Most of the time.

Mr. CONSTANDY. You stayed there throughout the visit?

Mr. COLLINS. I stayed there until they were in the basement, I believe, and I waited for about 10 minutes, and then I walked down into the basement, hoping that I could speed the thing up a little, get them out of the house. I didn't want to be there any longer than I had to be.

Mr. CONSTANDY. Now, I am unable as yet to find out why you were there in Attleboro at all that day.

Mr. COLLINS. Well, I tried to tell you.

Mr. CONSTANDY. Well, you didn't do anything in any case yet. This is the fourth property you visited on that day and each of them——

Mr. COLLINS. I didn't do a thing in my own interest—nothing at all.

Mr. CONSTANDY. You were again just accompanying Mr. Schwartz and Mr. Jacobs?

Mr. COLLINS. That's right. That's right.

Mr. CONSTANDY. While you were in the Martel house did you have any conversation with Mr. Schwartz or with Mr. Jacobs whatever about the house, its construction, or its value?

Mr. COLLINS. Certainly not about the value.

Mr. CONSTANDY. Not about its value?

Mr. COLLINS. No.

Mr. CONSTANDY. What might you have had a description or a discussion of, or, rather, what did you have a discussion of?

Mr. COLLINS. It's awfully difficult for me to remember anything that we had a discussion about. Might have said "nice house" or "that's a good thing" or this, that, or the other. Other than that, I can't remember.

Mr. CONSTANDY. You were aware at that time that Mr. Jacobs was a fee appraiser from the department of public works?

Mr. COLLINS. I understand that he was, yes.

Mr. CONSTANDY. How did you understand that?

Mr. COLLINS. He must have said so.

Mr. CONSTANDY. What did you do after you left Martel's house?

Mr. COLLINS. I think that we went back to Fall River and they dropped me off at my house and we went home.

Mr. CONSTANDY. While you were in Fall River did you visit any parcel that Mr. Jacobs had as an assignment from the department of public works?

Mr. COLLINS. While we were in Fall River?

Mr. CONSTANDY. I mean, Attleboro. Excuse me.

Mr. COLLINS. I think he went to look at some places himself.

Mr. CONSTANDY. Oh, some places?

Mr. COLLINS. I think so, yes.

MR. CONSTANDY. Did you accompany him?

MR. COLLINS. No.

MR. CONSTANDY. Did Mr. Schwartz accompany him?

MR. COLLINS. No. Not as I remember, no.

MR. CONSTANDY. Did he drive?

MR. COLLINS. I don't remember which one drove.

MR. CONSTANDY. Well, did you go in the car?

MR. COLLINS. One or the other of them drove.

MR. CONSTANDY. Did he go in the car to the parcels?

MR. COLLINS. Yes. Yes.

MR. CONSTANDY. When you got to these parcels what did you do?

MR. COLLINS. I didn't do anything except wait for him.

MR. CONSTANDY. In the car?

MR. COLLINS. Yes.

MR. CONSTANDY. Did Mr. Schwartz wait in the car?

MR. COLLINS. Yes.

MR. CONSTANDY. Mr. Jacobs went to look at his parcels?

MR. COLLINS. Yes.

MR. CONSTANDY. How many?

MR. COLLINS. I don't remember. Two or three.

MR. CONSTANDY. Two or three?

MR. COLLINS. Something like that.

MR. CONSTANDY. Did you go anywhere else that day?

MR. COLLINS. Not—not that I remember.

MR. CONSTANDY. Did you go to the city hall?

MR. COLLINS. Not that day.

MR. CONSTANDY. It was kind of a waste of a day for you, wasn't it?

MR. COLLINS. Yes, it certainly was

MR. CONSTANDY. You would not be able to have many days like that when you are appraising, would you?

MR. COLLINS. It was a Saturday. I wanted to play golf.

MR. CONSTANDY. I beg your pardon?

MR. COLLINS. I had intended to play golf.

MR. CONSTANDY. On the way back, how—how far a drive—how long a drive in time is it from Attleboro to Fall River?

MR. COLLINS. Excuse me?

MR. CONSTANDY. How long does it take to drive from Attleboro to Fall River?

MR. COLLINS. Oh, from my house to Attleboro, I—that's where they picked me up—it's about a half hour, at least.

MR. CONSTANDY. Did you have a conversation in the car on the way home?

MR. COLLINS. I presume we must have.

MR. CONSTANDY. About the properties?

MR. COLLINS. No.

MR. CONSTANDY. Not about the properties?

MR. COLLINS. Not that stands out in my mind. I can't think of anything—

MR. CONSTANDY. You might have had conversation, is that correct; but it doesn't stand out?

MR. COLLINS. There might have been a reference.

MR. CONSTANDY. I do not suppose Mr. Schwartz had any curiosity about the work that you were doing on the same parcels to which he had been assigned, as to what you would find in value?

Mr. COLLINS. That, I can't answer. I don't know.

Mr. CONSTANDY. Well, did he ask you?

Mr. COLLINS. No; he didn't.

Mr. CONSTANDY. Did you ask him?

Mr. COLLINS. I certainly did not.

Mr. CONSTANDY. Do you know Frank Harney?

Mr. COLLINS. Yes.

Mr. CONSTANDY. When did you first meet Mr. Frank Harney?

Mr. COLLINS. I think that I met him first around—and this is a guess—in the spring of 1960 is as close as I can come to it.

Mr. CONSTANDY. By then you had completed your appraisals in the Attleboro—

Mr. COLLINS. I had completed my appraisals.

Mr. CONSTANDY. You were finished with them?

Mr. COLLINS. Yes; I had finished.

Mr. CONSTANDY. Would you relate the conversation and the circumstances under which you met Mr. Harney that time, the first time?

Mr. COLLINS. He called my office. I didn't happen to be there. And I was making a call on—I was out on a business call, and my girl got me on the telephone, told me there was a man there from Boston that wanted to see me.

So I said, "Well, ask him to wait; I will be there in 10 or 15 minutes," which I was. And I walked in and that's the first time that I met him.

Mr. CONSTANDY. And what did Mr. Harney say to you when you got there?

Mr. COLLINS. He introduced himself to me. He said, "Are you the Collins that has been doing considerable work for the State?"

I said "Yes." He said, "I am with the State."

He said, "I have been working in the Fall River area, and I thought I would drop in and say hello to you."

He said, "I have spent a lot of time in the city hall. I have gathered lots of information. I know lots of things of comparable sales, sales of land, and so forth and so on."

He said, "Perhaps, if I could ever help you, don't hesitate to call on me." So I thanked him.

Mr. CONSTANDY. It was very nice of him, wasn't it? Any other conversation with him?

Mr. COLLINS. That was about it.

Mr. CONSTANDY. You didn't know him before that?

Mr. COLLINS. No, I didn't know him before that.

Mr. CONSTANDY. This was in the spring of 1960, Mr. Collins?

Mr. COLLINS. That's the best of my recollection.

Mr. CONSTANDY. It might have been earlier than the spring?

(No response.)

Mr. CONSTANDY. Is that correct? It would be in the spring of 1960?

Mr. COLLINS. That's my recollection, yes.

Mr. CONSTANDY. Did Mr. Harney say that he was at that time working in Fall River?

Mr. COLLINS. I don't know whether he said he was working in Bedford—I think he was working in New Bedford. I am not certain of this, but that he had done a lot of work in Fall River. I am not sure.

Mr. CONSTANDY. You, for the moment then, have no real understanding of why he came to see you?

Mr. COLLINS. No, I have no understanding of why he came to see me.

Mr. CONSTANDY. You caused a curious reaction to other people. Mr. Schwartz twice took you on a trip with him. You don't know today why.

Mr. Harney came to see you——

Mr. COLLINS. Oh, I know why.

Mr. CONSTANDY. And you do not know why.

Mr. COLLINS. He asked me to go to Attleboro with him.

Mr. CONSTANDY. Why?

Mr. COLLINS. I explained those circumstances.

Mr. WRIGHT (presiding). It is the opinion of the chairman that the witness has not responded to that question when it was asked earlier.

If the witness cares to answer the question as to why he was called to Attleboro for this meeting with Mr. Schwartz I think he should answer it at this point.

Mr. COLLINS. I am trying to answer it. I thought the purpose that he asked me to go to Attleboro with him was to get him to the place where he could get the key for one, for two properties. That is the only thing——

Mr. CONSTANDY. Mr. Collins, Mr. Schwartz was hired by the department of public works to go to put a figure of fair market value on these properties. You are not suggesting that someone who was hired for that purpose doesn't have the capacity to find the key?

Mr. COLLINS. That's what he told me. He asked me if I knew where it was. He said he had been there and couldn't get in the Charpentier property; how to get in there, and I told him. And he said, "Would you take a ride with me?"

Mr. CONSTANDY. Couldn't you have told him how to get the key to the Charpentier property?

Mr. COLLINS. I did tell him.

Mr. CONSTANDY. Wasn't the key to the Damort property at the dairy, which was——

Mr. COLLINS. Yes, it was, and the key to the house was at a gasoline station somewhere around Washington Street.

Mr. CONSTANDY. And Mrs. Martel was home. She let you in there, did she not?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Back to your conversation with Mr. Harney, your first conversation——

Mr. COLLINS. Yes.

Mr. CONSTANDY. That is the entire conversation?

Mr. COLLINS. That's about the sum and substance of it, as I remember it.

Mr. CONSTANDY. He explained to you that he could be, if he could be of any help to you he would be very happy to do so?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And on the comparables, and he had information?

Mr. COLLINS. He had gathered a lot of information on sales of land in the Fall River area, around the Central Street area, around the Narrows area, and he had spent a lot of time on it.

Mr. CONSTANDY. Were you at that time assigned to do appraisals in the Fall River area?

Mr. COLLINS. No, I was not.

Mr. CONSTANDY. Were you subsequently?

Mr. COLLINS. I would say, about a year after that.

Mr. CONSTANDY. But not at that time?

Mr. COLLINS. No.

Mr. CONSTANDY. It would be more likely to believe, since it is your hometown and you conducted your real estate business in that town, that if help was to flow from one to the other it might be more reasonable to expect that you would be able to help Mr. Harney. Is that not true?

Mr. COLLINS. It's a reasonable assumption.

Mr. CONSTANDY. Did you subsequently meet Mr. Harney again?

Mr. COLLINS. He came in again, I would say, a month later.

Mr. CONSTANDY. What did he say then?

Mr. COLLINS. He was in the neighborhood; he dropped in to say hello.

If any word had started to come in in connection with any of the Fall River stuff? I said, "If it had, I hadn't got any." And then he talked in general about——

Mr. CONSTANDY. Well, could you relate to us in specifics the talk that he made "in general?"

Mr. COLLINS. I can't, really, no.

Mr. CONSTANDY. Did Mr. Harney say to you that "we think you do all right?"

Mr. COLLINS. No.

Mr. CONSTANDY. He did not say that?

Mr. COLLINS. Not that I can recall.

Mr. CONSTANDY. Mr. Collins, are we again incorrect in having recorded this at the time you and Mr. May and myself had a conversation in your office?

Mr. COLLINS. There is a misunderstanding, Mr. Constandy.

Mr. CONSTANDY. There was a time when Mr. May and myself visited you in Fall River at your office, did we not?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did you at that time tell us that when Mr. Harney came to your place the second time he told you that "we think you do all right?"

Mr. COLLINS. Well, in what context is that? I don't quite understand what——

Mr. CONSTANDY. Mr. Harney, you explained, was referring to the appraisal work that you had done for the department of public works.

Mr. COLLINS. Did I do all right in the fact that I got a fair amount of work? Is that what you mean?

Mr. CONSTANDY. How about you explaining. You were the one who made the statement.

Mr. COLLINS. It's difficult for me to explain a remark if I can't understand the character of the conversation.

Mr. CONSTANDY. Maybe I can clarify it. Did he again boast to you of the people that he knew and left the impression with you that you would get a lot of work? Is that correct?

Mr. COLLINS. I think that that was the impression I was supposed to gather from it.

Mr. CONSTANDY. Now, can we go back to the earlier statement that "we think you do all right" and see if there is any relationship between the two things?

Mr. COLLINS. I don't remember exactly what you are saying or exactly what you are quoting. Could you give me a little of the conversation prior to that that will let me know what connection you are talking in?

Mr. CONSTANDY. The best I am able, Mr. Collins. You explained to Mr. May and myself the fact that there came a second occasion when Mr. Harney came to your office.

I will say you were quite free in the way you discussed it with us.

Mr. COLLINS. I am trying to be now.

Mr. CONSTANDY. I think so. If you will strike that. I think, perhaps, you do not hear me all the time, Mr. Collins, and I am sorry for that.

Mr. O'DONOGHUE. I think it is only fair to say that I don't think he hears you either.

Mr. CONSTANDY. No, but at any time that you think you do not hear me accurately, I wish you would point it out, because we do not want you to misunderstand any comments or questions that are asked.

Mr. COLLINS. All right.

Mr. CONSTANDY. At the time that Mr. May and I visited you, you were explaining that Mr. Harney twice had come to your place of business.

You stated on the first occasion he came he boasted to you of the people that he knew, the people of the State government, the people in the department of public works.

You didn't clarify it at that time, but you did not elaborate on it either at that time.

You did state that he came back again on a second occasion, and on that occasion, making reference to the appraisals that you had done for the department of public works, that he made the statement, "we think that you do all right."

At the time you made that statement we wrote it down.

Mr. COLLINS. I see.

Mr. CONSTANDY. You stated that he again boasted of the people that he knew and he left the impression with you that through him, perhaps, you could get more work.

Now, if I am in error or you believe me to be in error or if you were in error at the time you told us these things, Mr. Collins, I wish you would clarify it.

Mr. COLLINS. I can't remember exactly what I told you, but that is the impression that he left with me.

Mr. CONSTANDY. Prior to the time of his visit, is it not true that you had done appraisals in the Fall River area?

Mr. COLLINS. Oh, yes.

Mr. CONSTANDY. And then sometime, perhaps a year later, you did additional appraisals in the Fall River area?

Mr. COLLINS. I had done many appraisals in the Fall River area prior to that.

Mr. CONSTANDY. I would like to point out that did you not say this conversation took place—did you say this conversation took

place—on the second occasion with Mr. Harney, took place about a month after the first one?

Mr. COLLINS. I would think about that.

Mr. CONSTANDY. You recollect that the first conversation took place in the spring of 1960?

Mr. COLLINS. Yes, I would think so.

Mr. CONSTANDY. The second conversation, then, would have come either later in the spring or the beginning of the summer. Is that correct?

Mr. COLLINS. Do you want me to try to tell you why? I didn't want to say it to you when you were in the office because it sounded so silly.

But the way I am trying to place the times of the conversations and his visits to me, they weren't very far apart, and if you have talked to Mr. Harney you know how he talks.

And during the course of the conversation he said, "Well, if Bob is nominated for Governor and makes the grade," he says, "it looks like I will be the next commissioner of public welfare—of public works."

Mr. CONSTANDY. If no—

Mr. COLLINS. It was at that point that he lost me entirely.

Mr. CRAMER. If who is elected?

Mr. COLLINS. "Bob," he said.

Mr. CRAMER. Who is "Bob"?

Mr. COLLINS. I presume he referred to Robert Murphy, who was a candidate. He was Lieutenant Governor and was a candidate for Governor.

And Harney said to me that if "Bob makes it"—he referred to everyone nearly by first name.

Mr. CONSTANDY. He did not clarify who he meant by "B"?

Mr. COLLINS. Well, I assumed that is who he meant.

Mr. WRIGHT. Since the bringing of names of—

Mr. COLLINS. I didn't want to.

Mr. WRIGHT (continuing). Of other people into the testimony here has caused a certain amount of confusion, does the witness state that he knew to whom Mr. Harney was referring?

Mr. COLLINS. No, I can't say that I knew; no.

Mr. WRIGHT. You are making a presumption, then?

Mr. COLLINS. Oh, certainly, I am.

Mr. CRAMER. You knew who was running for Governor, did you not? "Bob"?

Mr. COLLINS. Well—

Mr. WRIGHT. Did you know all of the candidates for nomination for Governor in both parties?

Mr. COLLINS. Sir?

Mr. WRIGHT. Did you know the identity of all the various candidates for nomination for Governor in both parties?

Mr. COLLINS. I don't know. It was before the convention. That is why I am trying to relate the time of the visits. It would be shortly before—

Mr. WRIGHT. Therefore, you did not know all of the prospective candidates—

Mr. COLLINS. No, I didn't.

Mr. WRIGHT (continuing). For the nomination? It was conceivable that one of the other candidates might have been named "Bob"?

Mr. COLLINS. Oh, yes.

Mr. WRIGHT. Mr. Constandy?

Mr. CONSTANDY. Mr. Collins, the fee that was given to you in your letter of assignment for those properties in Attleboro, that we discussed, was \$2,050.

Is that correct?

Mr. COLLINS. Yes, that's right.

Mr. CONSTANDY. How much were you paid subsequently?

Mr. COLLINS. \$2,500.

Mr. CONSTANDY. The fee was \$2,050, but——

Mr. COLLINS. It was changed to \$2,500.

Mr. CONSTANDY. It was changed to \$2,500?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did you complain?

Mr. COLLINS. About the fee?

Mr. CONSTANDY. Yes, at \$2,050.

Mr. COLLINS. I called Mr. Dole, yes.

Mr. CONSTANDY. Prior to being paid?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Prior to making the appraisals?

Mr. COLLINS. Oh, yes.

Mr. CONSTANDY. Before you actually began to make the appraisals?

Mr. COLLINS. I think I was in the process of making the appraisals.

Mr. CONSTANDY. What did you tell Mr. Dole?

Mr. COLLINS. Well, the truth of the matter is this: Mr. Schwartz had called Mr. Dole and had told him he thought that the fee was inadequate.

He called me, told me what he had done, and said, "as a favor to me," he said, "so that I am not on the thing and there is a lot of work," he said, "will you call him?"

I said, "I don't want to do that." He said, "Well, I would appreciate it."

He said, "I don't think it is an adequate fee." I said, "I will do it but don't ever ask me to do it again."

Mr. CONSTANDY. You did not think it was worth more than \$2,050. Is that right?

Mr. COLLINS. I would have done the work for that fee, yes.

Mr. CONSTANDY. So, as a favor to Mr. Schwartz, you received an additional \$450?

Mr. COLLINS. I received a higher fee, but I didn't feel it was any favor at all.

Mr. CONSTANDY. I think not.

Mr. COLLINS. Well, that's the way I felt about it.

Mr. CONSTANDY. To get back to the meeting with Mr. Harney, which you say took place in the spring of 1960——

Mr. COLLINS. Yes, as best I remember.

Mr. CONSTANDY (continuing). On July 21 of 1960, did you not receive additional work in Fall River?

Mr. COLLINS. I don't know. If your records show that I did, I will accept that.

Mr. CONSTANDY. Yes, our records show that you did.

July 21 of 1960, following your conversation with Mr. Harney, in which he said, "We think you do good work," in which he said, "Perhaps, you could get additional work" you did get additional work.

You received five more assignments in Fall River and the fee for them was \$1,700.

Did you connect the assignment of those parcels with your conversation with Mr. Harney?

Mr. COLLINS. No, I don't connect it at all.

I had been getting assignments from the State of Massachusetts since 1954, as you have in the record. And I didn't make any connection with it at all.

Mr. CONSTANDY. Just for the moment then let's look at the record:

In 1954 you got \$450 worth of work from the department of public works.

In 1955 you didn't get any payment. There may have been an overlapping in some of the assignments.

In 1956 you were paid \$650 from the department of public works.

In 1957 you got \$1,800 from the department of public works.

In 1958, you got \$3,650; in 1959, you got \$5,850; in 1960, you got \$3,250; and in 1961, \$2,350.

I think that in 1961 you ceased to receive assignments, did you not, from the department of public works?

Mr. COLLINS. I haven't received any in several months.

Mr. CONSTANDY. Now, Mr. Chairman, may we call Mr. Joseph Schwartz, please? If you will remain there, Mr. Collins, we would like Mr. Schwartz to join you at the witness table.

Mr. WRIGHT. Mr. Joseph Schwartz, will you come forward, please?

Mr. Schwartz, will you take this other chair over here, please? The gentleman accompanying you; you wish to have him there at the table with you?

Mr. SCHWARTZ. Yes, sir.

Mr. WRIGHT. You can take one of the chairs there, and then he can take another one. Perhaps we can arrange to bring another extra chair.

Mr. Schwartz, will you remain standing first, please, and raise your right hand?

Mr. Schwartz, do you solemnly swear that the testimony that you will give to the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SCHWARTZ. I do, sir.

TESTIMONY OF JOSEPH SCHWARTZ, FALL RIVER, MASS.; ACCOMPANIED BY HARRY S. WENDER, WASHINGTON, D.C., COUNSEL

Mr. WRIGHT. All right. Will you take that chair there, please?

Mr. Schwartz, you are Joseph Schwartz?

Mr. SCHWARTZ. Yes.

Mr. WRIGHT. Will you state your address, please?

Mr. SCHWARTZ. 931 Madison Street, Fall River, Mass.

Mr. WRIGHT. And will you identify your counsel, please, who is with you?

Mr. SCHWARTZ. My counsel is Mr. Harry S. Wender, of Washington, D.C.

Mr. WRIGHT. W-i-n—

Mr. WENDER. W-e-n-d-e-r, Harry S., of the bar of the District of Columbia, 2026 I Street NW., Washington, D.C.

Mr. Chairman, before we continue, I trust Mr. Constandy will explain about Mr. Schwartz' physical condition. He is suffering from a very serious heart condition, and he wants to testify.

I have a certificate from a doctor that would permit him to be excused, but he wants to testify. I only ask that the committee recognize his condition, and I would like to have some water for him here if somebody would please pour it.

Mr. WRIGHT. Mr. Wender, the committee will take due cognizance of that fact, and we will try to be understanding and sympathetic with Mr. Schwartz' condition.

Mr. WENDER. Thank you, sir.

Mr. WRIGHT. We appreciate his cooperation in being here.

Mr. CONSTANDY. Mr. Chairman, in consideration of Mr. Schwartz' condition, and with Mr. Wender's approval, we have discussed these matters at some length prior to Mr. Schwartz' being called.

I think that the statements made during those discussions with Mr. Schwartz can go on the record with an affirmative statement by Mr. Schwartz that they are correct and, perhaps, it will be less taxing on him.

If at any time, Mr. Schwartz, you feel that the statements that I shall endeavor to read in with your affirmation of your testimony are incorrect I hope that you will call that to our attention and insist on calling it to our attention.

Mr. WENDER. Thank you. That is satisfactory.

Mr. CRAMER. He does not have any trouble hearing, does he?

Mr. WENDER. No.

Mr. SCHWARTZ. My hearing is all right; yes.

Mr. CONSTANDY. Mr. Schwartz has informed us that his principal business is lumber and building supplies which he operates in Fall River, Mass.

He has additional business interests, one of which is the preparation of land; that is, grading, placing street curbs, sewers, and gutters, for sale to building contractors who will thereafter develop that land as building sites and as finished homes. Is that correct?

Mr. SCHWARTZ. Correct, sir.

Mr. CONSTANDY. In addition to that, he finances construction and sells the contractors building supplies, sometimes taking a second mortgage on the property?

Mr. SCHWARTZ. Correct.

Mr. CONSTANDY. Mr. Schwartz in this way has been in the business which is related to real estate. Mr. Schwartz has been a realtor for 6 years.

He has no employee except for his son, who assists him in the business that he does in the real estate field.

Mr. Schwartz has told us that he has never received a commission from the sale or purchase of property. He has never rented or managed property, and he has never appraised, that is, appraised in the sense that we discussed it, and that would be a written appraisal in detail of the type required by the department of public works in support of their condemnation—he has not done this for any bank. He has not done this for any mortgagor. He has not done this for anyone

other than the department of public works, and at the time he began to receive assignments from the department of public works these were, in fact, the first appraisals which he had ever done.

Now, I will point out, as I am sure Mr. Schwartz would were he testifying, that in connection with his building business he has developed some familiarity with some aspects of building values.

Now, I want it clearly understood, and I would like your affirmation on this, Mr. Schwartz, that at the time you did receive your first assignment to make appraisals for the department of public works that you had never, in fact, before made an appraisal, is that correct, in the context in which I have stated it?

Mr. SCHWARTZ. I have done other appraisals but never a written appraisal.

Mr. CONSTANDY. You have at times expressed your own opinion of that to people who would ask you for that.

You have never done this for a fee and you have never reduced it to writing. Is that correct?

Mr. SCHWARTZ. That is correct.

Mr. CONSTANDY. However, Mr. Schwartz began receiving appraisal assignments on October 14, 1957, and since that date, and to the present, he has received 26 assignments to appraise 86 parcels at a fee of \$18,350.

In addition, he has been paid \$1,100 in fees for court appearances at \$100 a day as a real estate expert, for a total receipt from the State of \$19,450.

I might say that the source of this information is the records in the department of public works of the Commonwealth of Massachusetts.

In 1957 he was paid \$200. In 1958 he was paid \$3,300. In 1959 he was paid \$6,550.

In 1960 he was paid \$4,550. In 1961 he was paid \$750, up to the time that DPW terminated his services about June 1961.

Mr. SCHWARTZ. May—

Mr. CONSTANDY. I will clarify one point that, perhaps, is disturbing you. It is our understanding that he has not been paid some \$3,000 for appraisals made during the year 1960, and that these appraisals are being reviewed and the disbursements to Mr. Schwartz are being considered.

Mr. SCHWARTZ. I would like to add—excuse me—I would like to add that the figures that you read there are approximately what I called back home and got some information on, and those figures are about correct.

Mr. CONSTANDY. Thank you.

Mr. SCHWARTZ. I may be wrong within \$100 or \$200 here.

Mr. CONSTANDY. Fine.

Mr. SCHWARTZ. Yes, also the Commonwealth has, since this year, sent me a check for \$2,000 because of one appraisal that I refused to do but which I returned to Mr. Dole.

There were three appraisals in there, and I returned one back to him and gave him the reasons that I didn't want to do it, because I knew the party involved too well and had been an old friend of their family's, and I refused to do it.

And there was only \$2,000 that was being held up and was finally sent through last month.

Mr. CONSTANDY. Fine. Thank you.

Mr. Schwartz stated to us that he was visiting the home of his brother-in-law about June of 1957, his brother-in-law being Mr. William M. Jacobs, and he saw Mr. Jacobs doing appraisals.

He felt that there was no reason why he couldn't be assigned some work and he spoke to Mr. Jacobs about it. And Mr. Jacobs told him to see Associate Commissioner Fred Dole, which he did, and which Mr. Schwartz said he did alone. He visited Mr. Dole by himself.

Mr. Dole told him to submit a letter with a list of his qualifications, which he did. Thereafter he received assignments.

Relative to your list of qualifications, Mr. Schwartz, can you tell us what they were?

Mr. SCHWARTZ. At the minute I don't remember what that letter contained with the exception of giving a brief history in the last 24 or 25 years—at that time it might have been about 20 years—that I had been in the lumber business and going on explaining what some of my qualifications were. I have no definite recollection of it.

Mr. CONSTANDY. Did you also submit to him a list of organizations in the real estate field to which you belonged?

Mr. SCHWARTZ. I don't think that I belonged to all of the organizations that I have since joined up with since I have been doing appraisals.

Mr. CONSTANDY. Well, it will not be necessary to trouble you to read that now.

Mr. SCHWARTZ. No.

Mr. CONSTANDY. But of those organizations that you did belong to at the time that you submitted the qualifications to Mr. Dole, how long had you been a member of them prior to the time that you submitted them to him as the qualifications?

Mr. SCHWARTZ. I do not remember, sir.

Mr. CONSTANDY. Had you joined them just prior to submitting them to Mr. Dole or had you belonged to them—

Mr. SCHWARTZ. I honestly do not remember. I hadn't belonged to them for long, that is the real estate board and so forth, I hadn't belonged to them too long.

I believe that I belonged to the Fall River—I was a realtor at the time and a member of the Fall River Real Estate Board.

Mr. CONSTANDY. Do you remember when you became a member of the real estate board?

Mr. SCHWARTZ. I honestly don't.

Mr. CONSTANDY. Was it much prior to June of 1957?

Mr. SCHWARTZ. I don't know.

Mr. CONSTANDY. Did you again discuss the matter of getting work with Mr. Jacobs?

Mr. SCHWARTZ. Well, Mr. Jacobs is a brother-in-law of mine and visits my house once or twice a week, and I might have mentioned that I had sent a letter to the Commissioner.

And that was all that I said to him, as I think he asked me if I did, and I think I told him that I sent the letter and that was all that was said.

It was some months later. How many months later that I received some work, I don't know.

Mr. CONSTANDY. Did Mr. Jacobs make any comment to you to the effect that he had spoken to anybody in your behalf?

Mr. SCHWARTZ. I do not remember, sir.

Mr. CONSTANDY. Might he have?

Mr. SCHWARTZ. I do not remember. He might have, but I don't remember.

Mr. CONSTANDY. I want it very clear: It is your present recollection that is uncertain. You don't know at this moment whether he did or did not tell you that?

Mr. SCHWARTZ. I don't know.

Mr. CONSTANDY. The first appraisal assignment you received was to appraise two homes in Middleboro, and you told us at the time you received them you were uncertain as to what form the finished appraisal should follow, and that you thereafter borrowed from Mr. Jacobs an old appraisal of his, and you conformed your appraisal to that format followed by his. Is that correct?

Mr. SCHWARTZ. That is correct.

Mr. CONSTANDY. After that first assignment, a very few months thereafter, you received assignments from the department of public works. You stated, too, that with the exception of certain parcels in Attleboro, which we will discuss, you would visit the property alone or in the company of your son, who assisted you.

Now, is it correct that your son did assist you in making the appraisals that you submitted to the department of public works?

Mr. SCHWARTZ. No, he did not assist me in making the appraisals. He might have done some of the light work, getting some of the comparables and checking down some of the records or might have taken some pictures, and so forth.

Mr. CONSTANDY. Well, in the general sense, that is what I mean. He assisted you in the preparation then of your appraisal report?

Mr. WENDER. Mr. Constandy, may we agree that when the witness says "might" that he means that it did happen that way?

It is a colloquialism, apparently, with him, and I didn't understand him at first myself, but I understand that when he says "might" I would probably mean something different from that.

Mr. CONSTANDY. Mr. Wender, I am sure you recognize the necessity of having a record in a forum such as this clear on those points and when Mr. Schwartz says "might" he will be taken as "might," and when Mr. Schwartz said he did or "yes" he will be taken that way.

I appreciate your position, but I think Mr. Schwartz, being a visitor here, might accommodate the Congress in following the local custom here.

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. When you say—when you mean "yes", say "yes."

We heard an interesting description by Mr. Collins of a trip he made at your request to Seekonk, where he met you and your brother and thereafter your brother-in-law and, therefore, made a tour of certain parcels to which both of you had been assigned in Seekonk. Were his recitations correct? You heard it, did you not?

Mr. SCHWARTZ. I heard it. There was only one or two things that I would like to add, which was the peat bog there that we rode around, and we did drive through—we did drive over the land.

And to my recollection, at least—and there were certain—I don't remember whether Mr. Collins was with me that day or not, but I did drive over the land and I think it was that day where some of the drainage and pipes were shown to us, and some of the other things that were important to know at that time.

In fact, reference to the peat bog, that was one of the reasons why I called Mr. Dodge, and I think it was that date that Mr. Dodge came down and——

MR. CONSTANDY. May I help you? Mr. Collins, was Mr. Dodge present on the day that you visited Seekonk?

MR. COLLINS. Yes, he was.

MR. CONSTANDY. So it was not just you and Mr. Schwartz, Mr. Jacobs and the owner? In addition, there was Mr. Dodge.

Is that correct?

MR. COLLINS. That's correct.

MR. CONSTANDY. Was there anyone else present?

MR. COLLINS. No.

MR. CONSTANDY. What was Mr. Dodge's capacity at that time, if you know?

MR. SCHWARTZ. Well, he was the engineer of the department there. I called him, and I told him that this appraisal was a little different than the average land appraisal that I had been in the habit of doing, because there were peat bogs in there, and also drainage and different things that I rode around and saw, and it was on a data sheet that I had, and I drove around on a Sunday, two Sundays before that, looking around, and I couldn't just quite make out what they were, what the value was or how this Mr. Butterworth was even going to get out of his house that was in the middle there, and I couldn't understand the plans.

MR. CONSTANDY. That might relate back to the fact that you were comparatively inexperienced when you began this function?

MR. SCHWARTZ. That, I agree with you.

MR. CONSTANDY. And Mr. Jacobs was present for what purpose?

MR. SCHWARTZ. I honestly don't remember but, as I said before, Mr. Jacobs is a steady visitor to my house a couple of times a week, sometimes more. He may have dinner there at different times and he is down at weekends. His wife and my wife are sisters.

And he might have been there at the time or he might have known Mr. Dodge was coming down. I honestly can't say for sure.

MR. CONSTANDY. You don't know why he was there?

MR. SCHWARTZ. No, I am not positive.

MR. CONSTANDY. Mr. Schwartz, you are quite close to Mr. Jacobs?

MR. SCHWARTZ. The answer to that is "yes" and "no."

MR. CONSTANDY. Could we stay with the part that is "yes" for the moment? He visited your house frequently. He is a relative of yours?

MR. SCHWARTZ. Yes.

MR. CONSTANDY. I understand that. Mr. Jacobs, to your knowledge, was a fee appraiser, employed by the department of public works to make appraisals on behalf of the department of the properties that were being taken. Is that correct?

MR. SCHWARTZ. That's correct.

MR. CONSTANDY. You knew that?

MR. SCHWARTZ. That he was a fee appraiser? Yes.

MR. CONSTANDY. You also were aware that he represented property owners on occasion?

MR. SCHWARTZ. In some cases, I found out later that he represented property owners, but I didn't know it at the time when some of these

things—some of these appraisals were started finally. And when I found out, if anything was said about it or anything, I just clammed up.

Mr. CONSTANDY. Why?

Mr. SCHWARTZ. I don't know why.

Mr. CONSTANDY. As a matter of ethics?

Mr. SCHWARTZ. Well, personally, I think that was the reason.

Mr. CONSTANDY. You did not want to disclose to Mr. Jacobs something to which he, perhaps, otherwise was not entitled to know, if you represented the other side. Is that it?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. At the time you visited Seekonk with Mr. Collins and Mr. Butterworth—is it?

Mr. SCHWARTZ. Butterworth.

Mr. CONSTANDY. And Mr. Dodge, and Mr. Jacobs, it was not known by you that Mr. Jacobs represented property owners, in fact, on the Forest Hills Nursery—Mr. Jacobs represented the landowner?

You and Mr. Collins were the fee appraisers assigned by the department of public works. You were not aware of that?

Mr. SCHWARTZ. At that time, no.

Mr. CONSTANDY. You subsequently learned of it?

Mr. SCHWARTZ. Sometime later.

Mr. CONSTANDY. When, relative to the conclusion of the matter?

Mr. SCHWARTZ. I honestly cannot say.

Mr. CONSTANDY. Did you know at the time you submitted your appraisals of the Forest Hills Nursery?

Mr. SCHWARTZ. No.

Mr. CONSTANDY. Mr. Jacobs was an experienced appraiser, you say?

Mr. SCHWARTZ. In my opinion he was.

Mr. CONSTANDY. Would it not have been reasonable for you to have discussed with Mr. Jacobs the problems that you had in connection with making your appraisals for the department if you believed that he was an experienced appraiser?

Mr. SCHWARTZ. I might have at times.

Mr. CONSTANDY. Did you?

Mr. SCHWARTZ. I might have discussed some cases with him, yes.

Mr. CONSTANDY. Do you remember any particular cases?

Mr. SCHWARTZ. I do not.

Mr. CONSTANDY. In this case does "might" mean "did"? Does it mean "yes"?

Mr. SCHWARTZ. Excuse me. Yes.

Mr. CONSTANDY. You did discuss cases?

Mr. SCHWARTZ. We talked about them.

Mr. CONSTANDY. Well, that is discussing them. I think the point is quite clear—

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY (continuing). That there were times that you discussed your cases with Mr. Jacobs?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. On those occasions did you know whether he represented the landowner or not?

Mr. SCHWARTZ. No.

Mr. CONSTANDY. It is kind of a hazardous thing, is it not,——

Mr. SCHWARTZ. When I found out at one time, where he represented a landowner, I clammed up and I said nothing else to him.

Mr. CONSTANDY. But you did not know his——

Mr. SCHWARTZ. I didn't.

Mr. CONSTANDY. So there were some hazardous times, the times you had those conversations with him when you discussed problems that you had, that he might have been the property owner's appraiser. Is that correct?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. What kind of problems did you discuss with him? Would they be problems that relate to value?

Mr. SCHWARTZ. For example, on the Butterworth case I talked about what peat moss was worth and a few other things like that when we were out.

Mr. CONSTANDY. Mr. Schwartz, here today testifying under oath, will you state that Mr. Jacobs never expressed his opinion of value to you on any property to which you were assigned by the department of public works?

Mr. SCHWARTZ. To my recollection he didn't, because I made up my own minds—my own mind on what values were——

Mr. WENDER. Pardon me. That is not the question.

Could you ask the reporter to repeat that question, because I don't think he understood it.

Mr. CONSTANDY. Will you read the question?

(The record was read by the reporter, as requested.)

Mr. SCHWARTZ. I don't recollect any at this time.

Mr. CONSTANDY. Mr. Schwartz, on November 4, 1959, were you not also assigned certain parcels in Attleboro to make appraisals for the department?

Mr. SCHWARTZ. If that is the date, yes.

Mr. CONSTANDY. The properties—I will read them and you correct me if I am wrong—were the properties owned by Charles M. and Helen Logan, H. & B. Building Corp.—that is Mr. Roddy who testified earlier—Louise Charpentier, Jencks-Adams Co., the Damort Land Corp., Donald and Maryellen Boardman, Omer A. and Joanne C. Martel, and the estate of Alfred James Holden. Is that correct?

Mr. SCHWARTZ. Correct.

Mr. CONSTANDY. They being the same cases to which Mr. Collins was assigned?

Mr. SCHWARTZ. Right.

Mr. CONSTANDY. And the appraisals were to be returned November 25, 1959.

Is that correct?

Mr. SCHWARTZ. I do not remember what the date was. If you have it, it is correct.

Mr. CONSTANDY. I have before me a copy of your letter of assignment, and that is the date which they were to be returned. And the fee, as listed in the original letter of assignment, was \$2,050. Is that correct?

Mr. SCHWARTZ. That's correct.

Mr. CONSTANDY. Mr. Schwartz stated that he had no prior knowledge that he was to be assigned these cases and didn't know until he received the letter of assignment. Is that correct, Mr. Schwartz?

Mr. SCHWARTZ. That's correct.

Mr. CONSTANDY. Mr. Schwartz stated that when he got the Attleboro assignment he did not know the streets and he drove there on Sunday to ride around and become familiar with the area. He found some places occupied and closed and some vacant. And later he had to get in touch with somebody to get in. Correct?

Mr. SCHWARTZ. Correct.

Mr. CONSTANDY. Thereafter, in Attleboro, he met Mr. Collins on the street and they each learned that you had been assigned the same parcels?

Mr. SCHWARTZ. No. That was not in Attleboro. I met him in Fall River.

Mr. CONSTANDY. You met him on the street in Fall River?

Mr. SCHWARTZ. Fall River.

Mr. CONSTANDY. Correct, Mr. Collins?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And on a subsequent Saturday you called Mr. Collins, did you, and asked him to accompany you to Attleboro?

Mr. SCHWARTZ. I don't remember whether it was the subsequent Saturday or what, but it was a Saturday.

Mr. CONSTANDY. On a subsequent Saturday. Some Saturday later.

Mr. SCHWARTZ. Yes. Yes.

Mr. CONSTANDY. And did you pick up Mr. Collins at his place and drive—

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY (continuing). To Attleboro with Mr. Jacobs? How did Jacobs happen to be there?

Mr. SCHWARTZ. As I said before, he is in my house two or three times a week and he might have come down for the Saturday, for the day, because he doesn't work Saturdays, and when he came in he mentioned the fact that he had some cases in Attleboro to inspect, and I told him that I was going over to Attleboro; in fact, I had an appointment with Mr. Collins.

Mr. CONSTANDY. Did he say he would go along with you?

Mr. SCHWARTZ. And he said he would go along with me. Now, I heard you ask Mr. Collins was it his car or my car. If you shot me, I couldn't remember whose car we used, but it was either one.

Mr. CONSTANDY. Have no fear, we will not shoot you.

Mr. Collins' recollection, that when you got to Attleboro, the three of you drove to the property of Charpentier. That is his recollection. Is that correct?

Mr. SCHWARTZ. I believe that is correct.

Mr. CONSTANDY. Is it correct that Mr. Collins did not join you and Mr. Jacobs in touring the Charpentier property?

Mr. SCHWARTZ. He walked over to the building and he was with the watchman or janitor or whatever he was there, who opened the door for us. And we left him standing there and I went through the building. Now, I have been back there a number of times since then also.

Mr. CONSTANDY. Yes. On that occasion did you make notes?

Mr. SCHWARTZ. I did make a few notes on that occasion; yes, sir.

Mr. CONSTANDY. Did you make any measurements?

Mr. SCHWARTZ. Measurements? No, we did not make any measurements because that could be taken from the outside at any time. In

fact, I didn't take pictures at that time. I had pictures taken on another day, also.

MR. CONSTANDY. Did Mr. Jacobs accompany you on your tour through the building?

MR. SCHWARTZ. He did, I believe.

MR. CONSTANDY. Did you have a conversation with Mr. Jacobs about the property?

MR. SCHWARTZ. I do not remember what the conversation was; we went through the building and talked about some of the—the boiler—we went in the boilerroom.

We went into a glass room, and I commented to him that years ago I had been in the same building, because we bought trunk cases and so forth from Mr. Charpentier when he was alive.

MR. CONSTANDY. Yes. Mr. Jacobs is not a shy fellow, is he? He speaks right up?

MR. SCHWARTZ. He does.

MR. CONSTANDY. Yes, he does. And in the course of going through the building, there is no reason to believe that on that occasion he was shy? He expressed himself, did he?

MR. SCHWARTZ. In what way?

MR. CONSTANDY. In whatever way he did. Did he comment about things that he saw? Did he comment about the value?

MR. SCHWARTZ. He did not comment about the value. He commented about the construction. He commented about some of the construction was of cement, and some was of wood floor, and so forth, and that's what we—as I was writing it down, that's what I was doing, some of the different things.

MR. CONSTANDY. Yes, that's exactly it. Some of the things that Mr. Jacobs commented about were material points to your appraisal, were they not? If he commented.

MR. SCHWARTZ. If he commented—if he commented about them, they might have been, yes—they would have been.

MR. CONSTANDY. You would write them down?

MR. SCHWARTZ. I didn't get that last question.

MR. CONSTANDY. And you would write them down?

MR. SCHWARTZ. I was looking at them, and I would write down what I saw.

MR. CONSTANDY. Sometimes what you saw was influenced by those things that he said. Is that not true?

MR. SCHWARTZ. I don't believe so.

MR. CONSTANDY. That is kind of hard to believe. You are there with Mr. Jacobs and Mr. Jacobs is giving his thoughts on what he sees. You are looking at things. Sometimes Mr. Jacobs would point out things to you which he saw, perhaps, which you did not see. Sometimes Mr. Jacobs would express his own ideas of what he saw.

MR. SCHWARTZ. In that respect, yes, he might have.

MR. CONSTANDY. And you reduced those things to writing, did you not?

MR. SCHWARTZ. He might have, and I did point—

MR. CONSTANDY. Did not some of Mr. Jacobs' thoughts become incorporated in the notes that you made from which you subsequently made your appraisal?

MR. SCHWARTZ. If he pointed something out, and I looked at it and saw that it was so, I would put it down, yes.

Mr. CONSTANDY. And from there you went to the Damort property. Is that correct? At least, that is what Mr. Collins testified to.

Mr. SCHWARTZ. We did not walk.

Mr. CONSTANDY. You did not walk?

Mr. SCHWARTZ. We rode.

Mr. CONSTANDY. You rode?

Mr. SCHWARTZ. Mr. Collins doesn't remember that, but I am pretty sure we rode because I am a very lazy fellow due to my health and I think we drove over. In fact, I drove my car right in front of the chain-link fence. That's why I remember it so distinctly.

Mr. CONSTANDY. I am glad your recollection is better than his.

Mr. SCHWARTZ. Well, I wouldn't say it's better but in this particular case the chain-link fence and everything there just sort of left an impression on me, and that's why I say I believe—I am sure we drove.

Mr. CONSTANDY. Why I am pleased that your recollection is better than his, is that, as you related this to us, you said that you wrote down everything on the place, being the small building used as a dairy, a retail dairy outlet, and you got the key and opened the gate and went into the large building.

You checked over the whole building, "went on with my appraisal while they went on ahead; Jacobs and Collins just walked around, opening the door on the other side and going out through the back." Is that correct, as you told us, Mr. Schwartz?

Mr. SCHWARTZ. I don't remember who opened the door in the back.

Mr. CONSTANDY. It is not a question of who opened the door; the question is whether Mr. Collins was not in the company of Mr. Jacobs as Mr. Jacobs toured the building.

Mr. SCHWARTZ. I couldn't swear to that.

Mr. CONSTANDY. Well——

Mr. SCHWARTZ. I might——

Mr. CONSTANDY. You were not under oath, as you discussed this with us, the night before last, but at that time—if you will permit me—at that time were you quite clear in your recollection that, as you were busy making your notes on your observations from within the building, Mr. Collins and Mr. Jacobs continued on ahead of you and, there being a railroad track that entered the front of the building, went through the building and out through the back, there was a door on either end of the property, and having gone inside the building together, the three of you, Mr. Jacobs and Mr. Collins opened the door in the realty property, the realty building, and went out to the back of the property?

Now, is that correct at the time that you told it to us or not?

Mr. SCHWARTZ. I honestly do not remember. Now——

Mr. CONSTANDY. You do not remember now. But you remembered it the other night?

Mr. SCHWARTZ. I said that they did, but whether they did or they didn't, I am not 100 percent sure.

Mr. CONSTANDY. Were you 100 percent sure the night before last?

Mr. SCHWARTZ. No. I was not 100 percent sure at that time either.

Mr. CONSTANDY. Well, what is your present recollection?

Mr. SCHWARTZ. I have been under quite a strain here and there are a lot of things, believe me, that I can't recollect, and I am not trying to avoid remembering or anything else.

I wish the Congressman and the chairman and you would believe me. And I am not trying to hide anything. I have come here and I want to give a true honest testimony.

MR. CONSTANDY. Yes. What is your present recollection about what Mr. Collins did when you got to the Damort property?

MR. SCHWARTZ. I don't remember. I honestly do not remember.

MR. CONSTANDY. Mr. Collins—

MR. SCHWARTZ. I think Mr. Collins was on the other side of the building before we left there because we looked at the track. I think he looked at the track on the outside there with us later. Now, whether he was in the building with me or not, I do not remember. I am not sure.

But I think he looked at the track—

MR. CONSTANDY. More important, Mr. Schwartz, is whether Mr. Collins was with Mr. Jacobs. Do you remember that?

MR. SCHWARTZ. I do not remember.

MR. CONSTANDY. Mr. Collins, has any of this refreshed your recollection?

MR. COLLINS. My memory of it is, as I gave it to you. That is how I remember. This is sometime ago.

MR. CONSTANDY. Yes, it is. You walked over.

MR. COLLINS. It's difficult to go back.

MR. CONSTANDY. You walked over, by your memory, from Charpentier to Damort. Mr. Schwartz' memory is quite clear that you drove over. Your memory is that, having gone with him to get the key at the dairy building, you remained at the dairy building while he and Mr. Jacobs went on through the property.

His memory on that point on Monday was quite different.

What we would like to know now is which version of this is the truth.

MR. SCHWARTZ. He must know whether you were with me; which is true; whether you were or you weren't. I honestly don't remember.

MR. COLLINS. As I remember it, it's exactly as I told it.

MR. CONSTANDY. You stayed at the dairy building?

MR. COLLINS. What's that again?

MR. CONSTANDY. You stayed at the dairy building?

MR. COLLINS. As I remember it, yes.

MR. CONSTANDY. You might be in error?

MR. COLLINS. I could be. I could be.

MR. CONSTANDY. In any case, you were not in the company of Mr. Jacobs while you were on the Damort property?

MR. COLLINS. The three of us went to the property together.

MR. CONSTANDY. Yes, I understand that. It is what you did after you got there that concerns us.

MR. COLLINS. That is my memory of it. I went into the dairy with them and they got the key to the larger building. I think you had to open a link fence and also had to get a key.

MR. CONSTANDY. Yes, Mr. Schwartz explained this in detail on Monday. Mr. Schwartz explained that it was first necessary to unlock the gate.

Having unlocked the gate, you then proceeded into the grounds and then it became necessary to unlock the door of the lumber shed, and having done that, he went into the building and you went into the building, and Mr. Jacobs went into the building; that you and Mr.

Jacobs, not interfering with his appraisal work, you and Mr. Jacobs preceded him on through the building and went out the back door.

Mr. COLLINS. Well, that isn't my memory of it.

Mr. CONSTANDY. Well, I guess we are just stuck with the record as it is then. Mr. Schwartz, you mentioned the other night, too, Mr. Jacobs had nothing to say about the worth of the property.

May I ask you now whether your memory is better today than it was then?

Was that correct Monday when you told us that or did he have something to say relative to the——

Mr. SCHWARTZ. I might have mentioned something myself. I don't know whether he did or——

Mr. CONSTANDY. What might you have mentioned?

Mr. SCHWARTZ. The one thing I thought of at the time that I went over to this chain-link fence: we have been, as you know, in the lumber business, for the family, for 30-some-odd years. I have been in it for 24 or 25 years.

And I said to myself, I think, or thought to myself, what an ideal place this would be for a cash-and-carry lumberyard.

And, in my opinion, at that time if it was something that wasn't going to be taken by the State I personally would have been interested in buying it.

Mr. CONSTANDY. For \$67,000, Mr. Schwartz?

Mr. SCHWARTZ. I have been asked more than \$67,000——

Mr. CONSTANDY. Never mind what you have been asked, but would you have paid that price for that property if it were not going to be taken by the State?

Mr. SCHWARTZ. In my opinion that was a fair market value for that property.

Mr. CONSTANDY. Would you have paid it, is what I asked you.

Mr. SCHWARTZ. Yes. Unless I, from knowing what I know now, and of hearing the different things that have gone on and transpired in the last 2 or 3 days, my answer to that would be "No."

Mr. CONSTANDY. Why?

Mr. SCHWARTZ. Because I have heard of some of the things that Webb has come out with and some of the other people have come out with here that is just astounding.

In my opinion, as I said, a fair market value for that property was 60-some-odd thousand, that I figured out there.

And for the record, whether it is any appraiser, I would like to see him build a building like that or say that that building isn't worth approximately \$4.50 a square foot.

Now, that building is 20 feet high. I know something about buildings.

Mr. CONSTANDY. Mr. Schwartz, we will, at the appropriate time, get into the question of your opinion of value on the building. Therefore, if you will forebear for the moment, we are trying to get to that point.

Mr. SCHWARTZ. All right.

Mr. CONSTANDY. The balance of the recitation, as given by Mr. Collins, is substantially correct? You then visited the Martel property and perhaps others on that day?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. You returned to Fall River?

Mr. SCHWARTZ. Also Mr. Jacobs went and looked at some property that——

Mr. CONSTANDY. Yes, as Mr. Collins has said?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Mr. Collins, did there come another day when you and Mr. Schwartz again traveled to Attleboro?

Mr. COLLINS. Yes.

Mr. CONSTANDY. When was that?

Mr. COLLINS. A later date than this. I don't know just how much later, not too much later.

Mr. CONSTANDY. What did you do on that occasion?

Mr. COLLINS. We went—I went to Attleboro with Mr. Schwartz. I wanted to talk to some realtors to get comparable properties. I had done that before. Mr. Schwartz also wanted to get some regulations and assessments and visit the city hall.

Mr. CONSTANDY. How did you happen to go that day?

Mr. COLLINS. We rode—I rode in Mr. Schwartz' car.

Mr. CONSTANDY. There was only the two of you on this occasion?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Who called who?

Mr. COLLINS. He called.

Mr. CONSTANDY. He asked if you wanted to go to Attleboro with him?

Mr. COLLINS. Yes.

Mr. CONSTANDY. And you joined to take care of the respective businesses that each of you had there? Was it not a fact that at that time each of you had to find comparable sales for use in the appraisals?

Mr. COLLINS. That's a fact.

Mr. CONSTANDY. Is that correct, Mr. Schwartz?

Mr. SCHWARTZ. That correct, yes, sir.

Mr. CONSTANDY. Now, we have this situation: both of you are assigned to the same parcels in Attleboro. Each of you is expected, by the department of public works, to prepare a written report which represents your estimate of the fair market value of the property at the time it was taken by the State. Correct?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Mr. Collins, had you previously been to the city hall in Attleboro in an attempt to get comparables?

Mr. COLLINS. Not to get comparables but to develop other information.

Mr. CONSTANDY. What other information?

Mr. COLLINS. Assessed valuations of the properties.

Mr. CONSTANDY. And on that visit did you obtain the assessed valuations?

Mr. COLLINS. Yes.

Mr. CONSTANDY. That was one of the reasons that Mr. Schwartz had to go?

Mr. COLLINS. I talked to the gentleman on the zoning board.

Mr. CONSTANDY. Could you clarify that? Were you concerned with finding out how the property could be appraised for zoning?

Mr. COLLINS. Yes, I was, and I wanted to get a map of the zoning, if possible, from the city.

MR. CONSTANDY. One of the reasons Mr. Schwartz wanted to go that day was that he could go to the assessor's office?

Is that what he told you?

MR. COLLINS. Yes.

MR. CONSTANDY. You already had the assessments?

MR. COLLINS. I did.

MR. CONSTANDY. He did not?

MR. COLLINS. Apparently not.

MR. CONSTANDY. Did you then go to the assessor's office?

MR. COLLINS. Yes, we did.

MR. CONSTANDY. Mr. Schwartz, did you at that time get the assessments from the assessor's office?

MR. COLLINS. I presume that he got them.

MR. CONSTANDY. Mr. Schwartz, please.

MR. COLLINS. And we also talked with the assessor—

MR. SCHWARTZ. I went into the city hall at a number of different times. I do not remember whether I got the assessments the day I was with Mr. Collins or we just got the comparables.

But at one time when I went in it was very, very hard to get anything or any information whatsoever from the city hall, and the assessing department, of sales or anything that you wanted to know.

And now I recollect at that time—I think I mentioned that to Mr. Collins one time when I saw him downtown, and I said, "Someday you and I will both go over and maybe if the both of us are together he may open up and show us or give us some information."

And when we both went over there that day, not stopping to call him or we made an appointment the day before—I don't remember—but when we did go in he would pull the cards out and he would—

MR. CONSTANDY. Who?

MR. SCHWARTZ. The gentleman in charge of the office there.

MR. CONSTANDY. Which office is that?

MR. SCHWARTZ. I think his name was Bryan or Burns or something. I am not sure of his name.

MR. CONSTANDY. Yes, it is. It is Burns.

MR. SCHWARTZ. What is the name?

MR. CONSTANDY. Burns. This is in the assessor's office in the city hall in Attleboro. Is that correct?

MR. SCHWARTZ. Right.

MR. CONSTANDY. And you went there with Mr. Collins?

MR. SCHWARTZ. That's right.

MR. CONSTANDY. Let me just read what you told us and it will save the strain on yourself, if you will:

You would think he was taking out a thousand dollar bill. The man would whisper what it said on the card.

That was how we got the comparables orally from the man who read what he wanted to from the card. The man wouldn't let us look at the card. He told us what he wanted to.

You went together to obtain comparables for sales a half to a mile from Durham Street.

Correct?

MR. SCHWARTZ. With him.

MR. CONSTANDY. From the man in the assessor's office?

MR. SCHWARTZ. Yes, as close as we could.

Mr. CONSTANDY. The man that would go to the file and pick something out.

You thereafter went and visited the comparable properties that you had secured from that man and checked them out. Correct?

Mr. SCHWARTZ. I visited them. Mr. Collins didn't go with me. He might have gone on his own.

Mr. CONSTANDY. Is Mr. Schwartz' testimony correct as to your visit to the assessor's office?

Mr. COLLINS. That's substantially as I remember it, yes.

Mr. CONSTANDY. This man would take out the card as if it was a thousand dollar bill and mumble what it said on the card?

Is that the way it was?

Mr. COLLINS. As I remember it, he wouldn't say anything. He would point to it.

Mr. CONSTANDY. And then——

Mr. COLLINS. When he finished he may have asked—added something to the effect, "Now, I haven't told you anything" or something along those lines.

Mr. SCHWARTZ. Everything was a military secret with them.

Mr. CONSTANDY. Did you copy the information that you received from him at that time, Mr. Schwartz?

Mr. SCHWARTZ. Whatever he told me I copied.

Mr. CONSTANDY. Mr. Collins?

Mr. COLLINS. Yes, we took notes on that.

Mr. CONSTANDY. You wrote down those things that he told you?

Mr. SCHWARTZ. That's right.

Mr. CONSTANDY. Did you copy directly from the card, as he pointed to it, Mr. Collins?

Mr. COLLINS. Mr. Schwartz wrote down the information from the assessor and he gave it to me.

Mr. CONSTANDY. Were you present at that time?

Mr. COLLINS. Yes, I was present.

Mr. CONSTANDY. Was Mr. Schwartz writing it down from the card?

Mr. COLLINS. Yes, he was.

Mr. CONSTANDY. And you were there present with him?

Mr. COLLINS. I was present.

Mr. CONSTANDY. Watching him do it?

Mr. COLLINS. Watching.

Mr. CONSTANDY. And sometime subsequently he gave it to you?

Mr. COLLINS. Right then and there. I mean, he wrote it down and gave me the information there.

Mr. CONSTANDY. And when did you copy what he had written down?

Mr. COLLINS. I think, right then and there.

Mr. CONSTANDY. Could you——

Mr. COLLINS. I am not sure.

Mr. CONSTANDY. Could you see the card?

Mr. COLLINS. I couldn't see it well enough to read everything that was on the card.

Mr. CONSTANDY. You could see what Mr. Schwartz had written down?

Mr. COLLINS. Yes. Yes. Yes, I could see it.

Mr. CONSTANDY. Mr. Collins, did you thereafter check the comparable sales?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. You were satisfied that they were comparable?

Mr. COLLINS. You are never satisfied that they are comparable to the degree you would like them to be.

Mr. CONSTANDY. I beg your pardon?

Mr. COLLINS. You were never satisfied that they are comparable to the degree you would like them to be.

Mr. CONSTANDY. Didn't they satisfy you to the point that you subsequently used them? Is that correct?

Mr. COLLINS. They were the best that I was able to get.

Mr. CONSTANDY. Is it correct that the comparable sales, which you used in your appraisal, were secured on that day and under those circumstances that we have discussed now?

Mr. COLLINS. Those were—that's right.

Mr. CONSTANDY. Mr. Schwartz, is that correct, as to your appraisal?

Mr. SCHWARTZ. That's correct.

Mr. CONSTANDY. Mr. Schwartz, the appraisal assignments that you had were to go back to the department of public works on November 25, 1959.

You dated your appraisal on Damort, December 7, 1959. Is that correct?

Mr. SCHWARTZ. I don't remember, sir, but if it is dated that way, that's it.

Mr. CONSTANDY. I have a copy of it here.

Mr. SCHWARTZ. That's it.

Mr. CONSTANDY. To refresh your recollection——

Mr. SCHWARTZ. That's it, if it is dated.

Mr. CONSTANDY. Mr. Collins, on what date did you date appraisal report?

Mr. COLLINS. I will have to look. Do you have the date?

Mr. CONSTANDY. Yes, December 7.

Mr. COLLINS. I am willing to accept that.

Mr. CONSTANDY. The same date?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Is that right?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Mr. Schwartz, you found the total damage to be \$67,000. Correct?

Mr. SCHWARTZ. Correct.

Mr. CONSTANDY. On page 7 of your appraisal report, Mr. Schwartz, you have the following remark, and I quote, "The attorney for the Damort Land Corp. is James S. O'Connell, 11 Beacon Street, Boston, Mass." How did you know that?

Mr. SCHWARTZ. That information was on the data sheet.

Mr. CONSTANDY. Is it customary for you to include that information in your appraisal report?

Mr. SCHWARTZ. I do sometimes.

Mr. CONSTANDY. How do you——

Mr. SCHWARTZ. Anytime when I am thinking—if I am typing or writing it up or typing it up, I would do it, if it is on the—quite often it isn't even on the data sheet.

Mr. CONSTANDY. If it is on the data sheet you include it in your report?

Mr. SCHWARTZ. I include it.

MR. BLATNIK. May I have the attention of the witnesses? We have about completed this phase of the interrogation. We will also require Mr. Beasley. It will require about a full hour, and some of us have commitments and chores.

So would you two witnesses, Mr. Collins and Mr. Schwartz, be back here tomorrow morning at 10 o'clock?

MR. SCHWARTZ. Yes, sir.

MR. BLATNIK. And that is Mr. Collins and Mr. Schwartz, with your counsel, and is Mr. Hopkins here? Will you be here at 10 tomorrow morning?

MR. HOPKINS. Yes, sir.

MR. BLATNIK. And, Mr. Lawton, can you be here at 10 tomorrow morning?

MR. LAWTON. Yes, sir.

MR. BLATNIK. And Mr. Beasley, you will be here. So the hearings for today are closed. We will resume at 10 o'clock tomorrow morning.

(Whereupon, at 4:55 p.m., the hearing was recessed, to reconvene at 10 a.m., Thursday, February 8, 1962.)

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

THURSDAY, FEBRUARY 8, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS,
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to adjournment, at 10:10 a.m., in room 1302, New House Office Building, Hon. John A. Blatnik (chairman of the special subcommittee) presiding.

Present: Representatives Blatnik, Baldwin, Bass, Clark, Cook, Cramer, Fallon, Gray, Johnson, Jones, Kluczynski, McVey, Robison, Scherer, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. Mr. Collins and Mr. Schwartz, and your counsel, will you take your seats that you had yesterday?

The Special Subcommittee on the Federal-Aid Highway Program is called to order, resuming hearings on the Massachusetts highway investigation. We shall continue where we left off with the witnesses, Mr. Collins and counsel and Mr. Schwartz and counsel.

Mr. Constandy, you were interrogating when we left off yesterday.

Mr. CONSTANDY. Yes. At the time we stopped yesterday we were discussing the matter of comparable sales, which both you and Mr. Collins received from the tax assessor at Attleboro, Mr. Schwartz.

Before we continue, there are a couple of questions which were brought to my attention by Mr. May, the counsel. He requested we clear the record on those two points.

Mr. Schwartz, in his real estate business, has brought to our attention that on one of the items he received he was helped by his son, and he had additional assistance in that business by both his wife and a woman employee. Is that correct, Mr. Schwartz?

TESTIMONY OF JOSEPH SCHWARTZ, ACCOMPANIED BY HARRY S. WENDER, COUNSEL; AND ERNEST COLLINS, ACCOMPANIED BY JOHN O'DONOGHUE, COUNSEL—Resumed

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. The other matter was in connection with those times you were in the company of Mr. Jacobs, when you would be con-

cerned with the appraisals to which you had been assigned by the department of public works. I wonder if Mr. Schwartz, you would like to clarify that to us, as to what the general situation was any time that Mr. Jacobs happened to be in the company of yourself, or, as you say, in the company of anyone else, as that specifically relates to the things we are considering here.

Mr. SCHWARTZ. Mr. Counsel, I had received some time later—I don't know the date, but some time later I received an appraisal on the Vermont Sand & Gravel—

Mr. CONSTANDY. No. To clarify the record, Mr. Schwartz, we had testimony yesterday relative to the degree to which Mr. Jacobs would project himself into the work which you were doing for the department, and conversations which he would have with you.

Mr. SCHWARTZ. Yes. At times when Mr. Jacobs was with me he might—

Mr. WENDER. Stop using that term "might."

Mr. SCHWARTZ. He did say in his opinion certain things were worth X number of dollars. But that didn't mean that I had to, or that does not mean I took his figures on anything. But he did come out with certain things at different times. Mr. Jacobs is more or less of—he will talk about certain things because he is an appraiser and knows certain things, and he will mention them. But I used my own judgment in arriving at these figures.

Mr. CONSTANDY. In any case, your judgment was subjected, to the degree that it may have been, by these influences of Mr. Jacobs, in making comments about his ideas of value. Is that correct?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. I would like to go back to the time that you and Mr. Collins were together in the city tax assessor's office at the city hall. That would be in Attleboro. Is that correct?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. When you first walked into the office to secure for your purposes sales which you could use for your appraisal as comparable sales, what statement was made to the man in the office? What did you tell him you wanted?

Mr. SCHWARTZ. I told him that I was doing an appraisal for the State of Massachusetts and I was interested in sales that were made in and around the certain district that I had appraisals on, such as Turner Street, and so forth. And he looked around there and could not see anything except sales of a certain size there, and he pulled out some cards later.

Mr. CONSTANDY. Did you indicate to him the nature of the type of sale you were looking for? In other words, you had to appraise the property for the Damort Land Co. Certain sales within this geographic area you defined to him might be applicable to Damort, and perhaps other sales in that same area might be residences, and not applicable.

Did you have any conversations with him where you defined to him the type of thing you wanted from his records?

Mr. SCHWARTZ. I told him the appraisals I was taking and I gave him an idea of what I was looking for—that it was commercial property.

Mr. CONSTANDY. You told him that you wanted commercial property?

Mr. SCHWARTZ. That is correct. Or large tracts of land.

Mr. CONSTANDY. Did you indicate to him any range of value you were looking for?

Mr. SCHWARTZ. Not to my knowledge.

Mr. CONSTANDY. Mr. Collins?

Mr. COLLINS. No, he didn't.

Mr. CONSTANDY. Did you have conversations with the gentleman?

Mr. COLLINS. With the assessor?

Mr. CONSTANDY. Yes.

Mr. COLLINS. I may have had some conversation with him.

Mr. CONSTANDY. Did you at any time indicate to him the price range of sales within which you would be interested?

Mr. COLLINS. No, sir.

Mr. CONSTANDY. You simply wanted sales within the geographical limits?

Mr. COLLINS. That's right.

Mr. CONSTANDY. And he procured certain cards from his records that reflected sales within that area. Is that correct?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Is that correct, Mr. Schwartz?

Mr. SCHWARTZ. Yes, sir.

Mr. CONSTANDY. Mr. Schwartz, the comparables which you used in your appraisal, did you secure all of them from that man at that time in the city tax assessor's office?

Mr. SCHWARTZ. I do not remember.

Mr. CONSTANDY. Do you have a copy of your appraisal?

Mr. SCHWARTZ. Of my appraisal. Yes.

Mr. CONSTANDY. Would you make reference to it and see if it will refresh your recollection? And while he is doing that, Mr. Collins, perhaps you can answer the same question. The comparables which you used in your appraisal, did you secure all of them from copying data that Mr. Schwartz wrote down at the time both of you were in the city tax assessor's office?

Mr. COLLINS. Yes.

Mr. CONSTANDY. You got five. Is that correct?

Mr. COLLINS. Yes.

Mr. CONSTANDY. You used those five?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did you receive any of those five from any other person, independent of that day and that time?

Mr. COLLINS. No.

Mr. CONSTANDY. Let me ask you if you received any comparable sales from him which you did not use in your appraisal?

Mr. COLLINS. No, sir.

Mr. CONSTANDY. He gave you five, and you used those five, and you didn't obtain those five from anyone else?

Mr. COLLINS. No, sir.

Mr. CONSTANDY. You are very clear on that?

Mr. COLLINS. Yes.

Mr. SCHWARTZ. To my knowledge at that time I used the comparable sales that were given to me, and my son also made some different calls in my recollection, from what he told me last night,

when we discussed this matter with him—that he made some phone calls on some comparable sales. Now, whether they—

MR. CONSTANDY. May I refresh your recollection?

Are you aware of the fact that the comparable sales which appear in Mr. Collins' appraisal, and the five he used, were those you used, and you used no others? Does that refresh your recollection?

MR. SCHWARTZ. I think these were the only four that were given to me at that time. I think these are the only ones I used.

MR. CONSTANDY. You received none of those four from anyone else. Is that correct?

MR. SCHWARTZ. To my knowledge, no.

MR. CONSTANDY. You reported to the State the information you secured at that time from the city tax assessor's office?

MR. SCHWARTZ. Yes, sir.

MR. CONSTANDY. Did you at any time thereafter go to the registry for that county to check the information which was given to you by the city tax assessor of Attleboro on those sales?

MR. SCHWARTZ. I don't remember.

MR. CONSTANDY. Mr. Collins, did you?

MR. COLLINS. No, sir, I did not.

MR. CONSTANDY. Do you know where the registry is?

MR. COLLINS. Yes, sir.

MR. CONSTANDY. Where is that?

MR. COLLINS. For that area it would be Taunton, Mass.

MR. CONSTANDY. Did either of you check the information you got at the registry?

MR. COLLINS. I didn't.

MR. CONSTANDY. Mr. Collins, did you make an inquiry pertaining to or concerning those sales, as to whether or not they would be applicable to the properties to which you were using them, particularly Damort?

MR. COLLINS. I didn't quite understand that, sir.

MR. CONSTANDY. Did you view the properties that were given to you at that time?

MR. COLLINS. Yes, sir.

MR. CONSTANDY. As sales which you later used as comparables?

MR. COLLINS. Yes.

MR. CONSTANDY. You went to the properties to view them?

MR. COLLINS. Yes.

MR. CONSTANDY. Did you make any other inquiry to satisfy yourself they were in fact comparable and applicable to the appraisal of Damort?

MR. COLLINS. I checked with two banks, to my memory, and three other realtors, in an effort to get comparable properties.

MR. CONSTANDY. Additional comparable properties?

MR. COLLINS. Yes, sir.

MR. CONSTANDY. I am referring now to the five you used.

MR. COLLINS. Yes.

MR. CONSTANDY. Did you make any further inquiry as to the comparability of those sales to the subject property, Damort?

MR. COLLINS. No, I didn't.

MR. CONSTANDY. Mr. Schwartz, did you?

MR. SCHWARTZ. No.

Mr. CONSTANDY. Mr. Collins, the comparables which you listed were sales, three of them in 1953, and you were making your appraisal in 1958. Is that correct?

Mr. COLLINS. Nine.

Mr. CONSTANDY. 1959?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Three of the sales you used were 6 years old, were they not?

Mr. COLLINS. Yes, sir. I guess that is correct.

Mr. CONSTANDY. One of them was a sale in 1955 and one of them was a sale in 1956. Is 6 years a period within which you would use comparables properly?

Mr. COLLINS. I would much prefer to have more recent sales than that.

Mr. CONSTANDY. How did it happen that you used these sales as to time?

Mr. COLLINS. Because they were in the immediate area. Within a few hundred feet.

Mr. CONSTANDY. Were they the only ones you could find?

Mr. COLLINS. Those were the ones I found. Yes, sir.

Mr. CONSTANDY. The first sale you list is the Ferrier Land Co., and it was a sale to John Bourque. That was one of the sales reported to you from the city tax assessor. Is that correct?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. That was an area 203,570 square feet. Is that correct?

Mr. COLLINS. Yes.

Mr. CONSTANDY. The sales price was \$10,500.

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Did you compute what the unit price would be per square foot?

Mr. COLLINS. I do have that.

Mr. CONSTANDY. I am asking you whether you have it here. Was it 5 cents a square foot? It won't be necessary to go further.

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. The Ferrier Land Co. is the adjacent property to the Damort property. Is that correct?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. That would seem to be the appropriate property to use as a comparable sale in making up your appraisal. Did you use it?

Mr. COLLINS. Yes, I did.

Mr. CONSTANDY. Did you allow it to weigh at the 5 cents per square foot in the value you found for the Damort property?

Mr. COLLINS. Not only the 5-cent figure. I took other things into consideration.

Mr. CONSTANDY. I realize you did, but it was one factor you took for the value you found for the Damort property?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Mr. Schwartz, you obtained the comparable sales from the city tax assessor at the same time Mr. Collins did, and in your appraisal you did not use this sale which was the adjacent property to Damort, which indicated a sale in 1955 of land at 5 cents a

square foot. You did not use that in your appraisal. Could you tell us why?

Mr. SCHWARTZ. I don't remember whether I had that one at that time or not, or why I didn't use it.

Mr. CONSTANDY. Let's clarify whether you had it or not. Mr. Collins only had to use those things he copied from you. If he had it, it would follow you had it initially. It is clearly established you had it. The question at the moment is why you didn't use it. It was the adjacent property and sold—industrial, and sold in 1955 for 5 cents a square foot.

Mr. SCHWARTZ. What was the name on that, please?

Mr. CONSTANDY. The Ferrier Land Co., to John Bourque. You won't find it in your appraisal report, but if Mr. Collins had it he got it from you. Could you tell the committee why you didn't use it?

Mr. SCHWARTZ. I don't know.

Mr. CONSTANDY. All right, Mr. Collins.

The second sale which you listed was Whitman's Diner, and I call your attention to the name and spelling of it. The grantee was Almac's, Inc. That was a sale in 1956 of 48,424 feet, as reported by you, with the sales price of \$50,000. Do you recollect that one?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. That would indicate a price per square foot of \$1.03.

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. In your opinion was that sale comparable and appropriate to use, in your appraisal of the Damort property?

Mr. COLLINS. It is a sale I used as a reference. I would have preferred to have a property more comparable than that.

Mr. CONSTANDY. Yes. We will see why you might have preferred it as we go along. This property was located where, Mr. Collins?

Mr. COLLINS. To the north.

Mr. CONSTANDY. What street was it on?

Mr. COLLINS. To the north of the area of the Damort property.

Mr. CONSTANDY. Isn't it a fact that it was zoned commercial?

Mr. COLLINS. Yes, sir. I believe that was correct.

Mr. CONSTANDY. What is the zoning of the Damort property?

Mr. COLLINS. Industrial.

Mr. CONSTANDY. How do you adjust for that?

Mr. COLLINS. You just adjust it in your own mind. You use these—

Mr. CONSTANDY. Isn't it a fact that commercial property will have a higher value than the industrial property, which was Damort?

Mr. COLLINS. Generally speaking, I would say that is correct.

Mr. CONSTANDY. Wasn't it true that the Damort property was at least a block from a street on which this sale was located?

Mr. COLLINS. Yes. It is that far away.

Mr. CONSTANDY. And what street was this sale located on?

Mr. COLLINS. The second sale now?

Mr. CONSTANDY. Yes. Whitman's Diner to Almac. Wasn't it located on Washington Street?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Isn't it a fact that Washington Street is close to, in the town of South Attleboro, U.S. Route 1?

Mr. COLLINS. Yes.

Mr. CONSTANDY. The most heavily trafficked road in that entire area and the most heavily built up road in that area.

Mr. COLLINS. That is correct.

Mr. CONSTANDY. Does it make it difficult to adjust for the sale of a property on U.S. Route 1, heavily trafficked and built up, and zoned commercial, compared to a property in from there at least one block which was zoned industrial?

Mr. COLLINS. Yes, it is.

Mr. CONSTANDY. It makes it difficult?

Mr. COLLINS. Yes, it does.

Mr. CONSTANDY. You overcame that?

Mr. COLLINS. Yes, sir. I thought so.

Mr. CONSTANDY. We will see how. Were there not buildings on the property of the sale you reported which were included in the sale price of \$50,000?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. So for \$50,000 they not only got 48,000 square feet of land, but there were certain buildings on the land?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Is it appropriate to take the sale of that property and include the buildings and divide it by the number of square feet and come out with a unit price of \$1.03?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. It is appropriate?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Could you explain that, please?

Mr. COLLINS. The buildings were of no value.

Mr. CONSTANDY. To whom?

Mr. COLLINS. To the buyer.

Mr. CONSTANDY. They might have been of no value to him, but he had to pay for them to get the land on which they were situated, did he not?

Mr. COLLINS. And then tore the buildings down.

Mr. CONSTANDY. Do you know he tore the building down?

Mr. COLLINS. Well, I believe so.

Mr. CONSTANDY. Did you make any inquiry to find out whether he did, in fact, tear the buildings down, or might he have sold them?

Mr. COLLINS. The buildings might have been disposed of.

Mr. CONSTANDY. Well, if the building was disposed of and was disposed of for value, would you not have to deduct from the total sales price the value received for the sale of the diner, and thereafter have a reduced price for the value of the land, which would reflect a lower unit price than \$1.03 per square foot? Isn't that true?

Mr. COLLINS. Yes. I would say that is true.

Mr. CONSTANDY. You didn't do it?

Mr. COLLINS. No, sir, I didn't.

Mr. CONSTANDY. Could you explain why you didn't do it?

Mr. COLLINS. I can't remember that, sir.

Mr. CONSTANDY. We will come back to that particular sale, Mr. Collins, and there is more that can be said about it.

Your third sale was in 1953, a sale from York to the First National Stores, who was located on U.S. Route 1, heavily trafficked and built up. The sales price was \$17,000 and there were 10,087 square feet.

It included buildings and you found a unit price of \$1.69. Again this property was sold commercial. The property you were appraising was zoned industrial. This property was on the main road. The property you were appraising was not. This property contained buildings and you incorporated the value of the buildings into the total sales price and divided by the number of square feet, again indicating through the inflation of the price by the value of the buildings that the unit price of the land was more than what it should have been.

Your fourth sale—I make that as a statement. If you would like to make any comment about it, go right ahead.

Mr. COLLINS. I have no comment.

Mr. CONSTANDY. I could make the same statement about your fourth sale, which is Fulton to First National Stores, and again on Route 1, and again zoned commercial, and again incorporating the building in the selling price of \$14,000 for 13,188 square feet, which would give you a unit price for land of \$1.06, if you incorporate and include the buildings.

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. The fifth sale was Old Colony Advertising, Inc., again to First National Stores, 45,367 square feet for \$20,000. Here we have a land price of only 44 cents a square foot, even though again on Route 1 and zoned commercial, but it did not have any buildings on it.

If we can compare for a moment the fact that the two preceding properties contiguous to this contained buildings and had a unit price of \$1.69 and \$1.06 when you incorporate the building value, you now have one without a building and the price per unit or square foot drops to 44 cents.

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. You used what price on Damort?

Mr. COLLINS. Mr. Constandy, Mr. O'Donoghue tells me I have a right to say this: The first land sale that you quoted, the Ferrier land to John Bourque for the \$10,500, contained 203,000 square feet. That property was below grade from 2 to 15 feet. I had an estimate from a contractor as to what it would cost to bring that land to grade, and the resulting figure is consistent with the figures I used in these costs.

Mr. CONSTANDY. What was the resulting figure?

Mr. COLLINS. Something around \$75,000. I don't have that note with me.

Mr. CONSTANDY. That would indicate 35 cents. Is that right? Approximately.

Mr. COLLINS. Nearer to 50, I think.

Mr. CONSTANDY. Take 50. How much did you use?

Mr. COLLINS. What is that?

Mr. CONSTANDY. Take 50, and how much did you use on the Damort property for your land value?

Mr. COLLINS. I used 50 cents.

Mr. CONSTANDY. You used 60 cents, I believe. Will you check?

Mr. COLLINS. That is a typographical error.

Mr. CONSTANDY. We will get to that shortly. I don't question the fact that the land adjacent zoned industrial might have necessitated some action on the part of the buyers to bring it to the standard of the

property you were appraising, and that is part of the process that one expected to follow in finding the land value. Is that true?

Mr. COLLINS. That is right.

Mr. CONSTANDY. You have to make certain adjustments in the sales price to compensate for the differences in the property. That is the normal procedure.

What was the name of the contractor you requested this from, Mr. Collins?

Mr. COLLINS. Mr. John Bailey.

Mr. CONSTANDY. Mr. John Bailey?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Where is he located?

Mr. COLLINS. Providence, R.I.

Mr. CONSTANDY. What is the nature of his employment?

Mr. COLLINS. I don't know his exact title, but it may be cost engineer for the A. C. Beales Co. He is the execut—

Mr. CONSTANDY. What type of work do they do?

Mr. COLLINS. General contracting work.

Mr. CONSTANDY. Buildings?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Earthwork for highways, or landfill?

Mr. COLLINS. They don't do it themselves.

Mr. CONSTANDY. How did you pose the question to Mr. Bailey? Did he come to view the property?

Mr. COLLINS. He didn't view the property.

Mr. CONSTANDY. Did you have a cross section made of the property?

Mr. COLLINS. I didn't.

Mr. CONSTANDY. Let me finish. Did you have a cross section made of the Bourque property to determine how much below grade it was?

Mr. COLLINS. I did that with my own estimates.

Mr. CONSTANDY. You estimated it?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. And you conveyed that information to Mr. Bailey?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Did he view the property?

Mr. COLLINS. No, sir.

Mr. CONSTANDY. Did you talk to him on the telephone?

Mr. COLLINS. No. I talked to him personally.

Mr. CONSTANDY. At the time you gave him your data did he then give you back the information at that time?

Mr. COLLINS. Yes.

Mr. CONSTANDY. It was not necessary for him to have any time elapse in order to make computations, or studies as to the availability of material for fill, or the cost of trucking into the area? Is that correct?

Mr. COLLINS. He gave me the figures at that time. I asked him about it later—

Mr. CONSTANDY. I know you did. Isn't it a fact that he gave you the figure for this off the top of his head? It might help you, Mr. Collins. I talked to Mr. Bailey. He described to me the circumstances under which he was able to assist you in the work you were doing in Attleboro.

Mr. COLLINS. Yes.

Mr. CONSTANDY. It was his recollection you posed certain questions to him and he gave you his best judgment, as he put it, "off the top of his head." Is that the type of information you got from him?

Mr. COLLINS. That is his phrase.

Mr. CONSTANDY. It becomes an approximation, does it not?

Mr. COLLINS. I thought it would be.

Mr. CONSTANDY. Did you inquire from anyone else as to the cost of bringing that to grade?

Mr. COLLINS. No, I didn't. That is the only man I talked to.

Mr. CONSTANDY. Do you have before you the appraisal on Damort, Mr. Collins?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Would you read the committee the first entry on your summation of damage paid? Directly beneath where it reads, "Value before taking."

Mr. COLLINS. Value before taking, 32,500 square feet of land at 50 cents a square foot.

Mr. CONSTANDY. Showing how much per square foot?

Mr. COLLINS. My typed figure says 60.

Mr. CONSTANDY. The typed figure is the one you submitted to the department of public works.

Mr. COLLINS. That's right.

Mr. CONSTANDY. The official figure you submitted on your appraisal, notwithstanding any correction you may have made since then, is 60 cents a square foot.

Mr. COLLINS. That is what I figured it at.

Mr. CONSTANDY. It comes to \$16,250.

Mr. COLLINS. Yes. That is at 50 cents a square foot.

Mr. CONSTANDY. That is at 50 cents a square foot?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Actually, 60 cents would have brought the figure to \$19,500.

Mr. COLLINS. That's right.

Mr. CONSTANDY. Was it a typographical error, Mr. Collins, or did you begin with a preconceived value for the land?

Mr. COLLINS. No, sir. It was a typographical error.

Mr. CONSTANDY. The next entry on your appraisal reads what?

Mr. COLLINS. Depreciated value of lumber warehouse, \$33,000.

Mr. CONSTANDY. I looked at the appraisal and I have been unable to determine what within the appraisal permitted you to make the flat statement simply, "depreciated value of lumber warehouse, \$33,000."

Such questions come to my mind as, How much did you allow for depreciation? What was the figure before you applied the depreciation? How much did you use per square foot or cubic foot, however you computed that? Is that contained anywhere within your appraisal?

Mr. COLLINS. No, it isn't. It is not documented in that respect, but I will give it to you, if you want me to do that.

Mr. CONSTANDY. It may be you will simplify it by telling us how you arrived at it.

Mr. COLLINS. This is how I arrived at it. The building contains 166,320 square feet. I applied a figure of 25 cents a cubic foot. That gave me a value——

Mr. CONSTANDY. I must have misunderstood you. It is 166,320 square feet?

Mr. COLLINS. I mean cubic feet.

Mr. CONSTANDY. And you applied a figure of how much?

Mr. COLLINS. 25 cents. It came to a value of——

Mr. CONSTANDY. May I ask you first, where did you get 25 cents?

Mr. COLLINS. That, too, I got from conversations with contractors.

Mr. CONSTANDY. Specifically, Mr. Bailey?

Mr. COLLINS. He was one.

Mr. CONSTANDY. And some other?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Who?

Mr. COLLINS. John Schroeder.

Mr. CONSTANDY. What did you pose to them which led them to give you the figure of 25 cents?

Mr. COLLINS. I described it to them.

Mr. CONSTANDY. Did they view it?

Mr. COLLINS. They did not view it.

Mr. CONSTANDY. What did you ask them?

Mr. COLLINS. I described the building and gave them the dimensions and asked them in their opinion what was a good figure to use; what did they think was a good figure to use. I had my own figure, but I wanted to check with them.

Mr. CONSTANDY. Did you use the term "good figure to use"?

Mr. COLLINS. A correct figure.

Mr. CONSTANDY. A correct figure?

Mr. COLLINS. That is what I mean by it.

Mr. CONSTANDY. You had a figure yourself of 25 cents prior to talking to them?

Mr. COLLINS. Do you want me to describe the entire thing? What I did entirely?

Mr. CONSTANDY. Maybe you can describe what you have done without reading it. If it is necessary you can read it and that will suffice to describe it.

Mr. COLLINS. I used a figure of 25 cents per cubic foot and came to a figure of \$41,508, which I call \$41,600.

Mr. CONSTANDY. I wonder where you got the 25 cents independently of the contractors you spoke to?

Mr. COLLINS. Following my discussion with them.

Mr. CONSTANDY. Did the 25-cent figure come from them?

Mr. COLLINS. Yes.

Mr. CONSTANDY. The 25-cent figure came from them. Is that correct?

Mr. COLLINS. Yes, sir. That is my memory.

Mr. CONSTANDY. You become more of a courier for the department of public works than an appraiser, it would appear. The comparables you got, you accompanied Mr. Schwartz and broke down from his writing as he wrote from the tax assessor. Your land figure, or, rather, the figures for the warehouse you got from Mr. Bailey and others.

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. As we get down into it we will find you got the figure from the contractor, Mr. Bailey. Is that correct?

Mr. COLLINS. He was one.

Mr. CONSTANDY. You used the 25 cents in any case. They did not at any time view the property?

Mr. COLLINS. No, sir; they did not.

Mr. CONSTANDY. Is it possible that with different types of construction you would have a different value per cubic foot, depending on the construction?

Mr. COLLINS. Yes. I described it.

Mr. CONSTANDY. In what detail did you describe it?

Mr. COLLINS. I gave them a construction breakdown of the building just as well as I could—the siding, and so forth.

Mr. CONSTANDY. In a general way?

Mr. COLLINS. Yes, sir. In a general way, what it was.

Mr. CONSTANDY. By that time had you made your study of the property?

Mr. COLLINS. Oh, I had been there.

Mr. CONSTANDY. I know you had been there, but you made a study?

Mr. COLLINS. Yes.

Mr. CONSTANDY. You had available to you all of the data you would thereafter use in evaluating the property?

Mr. COLLINS. Yes, sir. I think so.

Mr. CONSTANDY. You described to them the number of beams, and type of roofing it had, and the siding, and whether it had skylights, and what kind of roof it had, and what type of foundation it had. Did you go into those things in detail?

Mr. COLLINS. I told them those things.

Mr. CONSTANDY. In detail?

Mr. COLLINS. Yes, I think in—to some detail. Yes. Perhaps not in—

Mr. CONSTANDY. If you will go on with your computation then.

Mr. COLLINS. All right. I arrived at the figure of \$41,600. The building had no heat. I deducted \$1,500 because it had no heat. It had no floor.

Mr. CONSTANDY. Wait, wait. How did you decide to deduct \$1,500 because it had no heat?

Mr. COLLINS. That was what I would estimate the cost would be for the type of heat they would put in a building like that, if they wanted heat.

Mr. CONSTANDY. For \$1,500 you would have heat available for a building that had 166,000 cubic feet?

Mr. COLLINS. Yes, sir; I thought so.

Mr. CONSTANDY. Go ahead.

Mr. COLLINS. I deducted \$3,500 because it had no floor—50 cents a square foot, or 6,930 square feet. Adding those figures, I arrived at a figure of \$5,000.

Mr. CONSTANDY. Wait, if you will. We have \$3,500 and that was figured at 50 cents a square foot for flooring. Is that correct? You used the figure of 50 cents per square foot for flooring. Is that right?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Where did you get that figure?

Mr. COLLINS. I got that figure from Mr. Bailey.

Mr. CONSTANDY. All right. Now, we deduct \$3,500 from \$40,100?

Mr. COLLINS. I deducted \$3,500.

Mr. CONSTANDY. What did you get?

Mr. COLLINS. That left me with a figure of \$36,600.

Mr. CONSTANDY. OK.

Mr. COLLINS. Then I applied the depreciation of 10 percent—\$3,600—and my figure is \$33,000.

Mr. CONSTANDY. How did you arrive at 10 percent for depreciation?

Mr. COLLINS. That was my best estimate of what the figure should be.

Mr. CONSTANDY. Are there various kinds of depreciation which can be applied to this figure?

Mr. COLLINS. It can be. Yes, sir.

Mr. CONSTANDY. Could you perhaps enlighten us by explaining what different types of depreciation there are?

Mr. COLLINS. There are three different types of depreciation: physical, functional, economic.

Mr. CONSTANDY. The Congressmen and myself are perhaps less familiar than you are with these terms. Could you define them so it will help our understanding?

Mr. COLLINS. An example of functional depreciation would be a building which might be 75 to 80 years old, which, because of its construction, is inefficient for the purposes that it is used.

Mr. CONSTANDY. Which type did you use here?

Mr. COLLINS. Entirely physical.

Mr. CONSTANDY. Maybe we will discuss that, Mr. Collins.

Mr. COLLINS. Sir?

Mr. CONSTANDY. Maybe we could discuss that.

Mr. COLLINS. I estimated that the building was approximately 10 years old.

Mr. CONSTANDY. Did you know it was?

Mr. COLLINS. I was not positive of the age of the building.

Mr. CONSTANDY. Did you make any effort to find out whether it was?

Mr. COLLINS. Other than my own observations, I made no other effort. No, sir.

Mr. CONSTANDY. It looked like a 10-year-old building?

Mr. COLLINS. That is what it appeared to be to me—10 or 11 years old.

Mr. CONSTANDY. We will pause there. If you used 10 percent and then you got a 10-year-old building, you are applying depreciation at a rate of 1 percent per year. Is that right?

Mr. COLLINS. That is right.

Mr. CONSTANDY. What type of building was this?

Mr. COLLINS. A frame building.

Mr. CONSTANDY. Could you be a little more specific as to what the construction was on the outside? A shingle sheathing, or what?

Mr. COLLINS. Do you want me to read my description of the building?

Mr. CONSTANDY. All right.

Mr. COLLINS. This is my description:

This is a fine building, in excellent condition, and it is about 8 or 10 years old.

Mr. CONSTANDY. Eight to ten years old?

Mr. COLLINS. Yes, sir; that is what my report says. [Continues reading:]

It has a dirt floor. There are two large doors both front and rear. The spur track services this building. The exterior has asphalt shingle siding. The roof is of a type of asphalt shingle. There are wooden platforms on each side of the building. This building was designed for use as a lumber storage shed. It is presently used by the dairy for miscellaneous storage.

Mr. CONSTANDY. That's it. Is that the description you gave to Mr. Bailey and others to help them arrive at the figure together with Mr.——

Mr. COLLINS. I gave them more detail.

Mr. CONSTANDY. You gave them more detail than you gave the State?

Mr. COLLINS. I believe I did.

Mr. CONSTANDY. Taking such a building as you have described, and as you know it to be or have been, is this the type of building you would anticipate would last 100 years, if my understanding of this process is correct? To use 1 percent a year you are in effect saying this building has a life expectancy of 100 years. Is that correct?

Mr. COLLINS. Yes; I would expect it to.

Mr. CONSTANDY. You would expect that building to have lasted 100 years?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Could you read the next line of your appraisal under your value before taking?

Mr. COLLINS. Depreciated value of dairy and variety store, \$3,250.

Mr. CONSTANDY. Here again we have a flat statement. We don't have computations to back it up, and don't have the factors that went into the figuring to arrive at the figure of \$3,250. We don't know what the depreciation was allotted to that building, or what value you put on it, either per square foot or cubic foot, before applying depreciation. Do you have those figures there?

Mr. COLLINS. I have it somewhere there. I will look.

Mr. CONSTANDY. It might simplify it. Was the process followed in this building the same as the other?

Mr. COLLINS. I don't believe I discussed this building with anyone else.

Mr. CONSTANDY. It was a small building of relatively small value? Is that correct?

Mr. COLLINS. That is correct.

Mr. CONSTANDY. Did you just put a figure on it in looking at it?

Mr. COLLINS. I put a figure on it and gave it thought before I did it.

Mr. CONSTANDY. Did you make computations, as you did in the other one?

Mr. COLLINS. Yes, sir. Do you want my figures on it?

Mr. CONSTANDY. Yes.

Mr. COLLINS. The building contains 546 square feet. I applied a replacement cost of \$9.15.

Mr. CONSTANDY. May I ask you where you got that?

Mr. COLLINS. From the result of my experience in this sort of thing.

Mr. CONSTANDY. It is your own figure?

Mr. COLLINS. That is my—that was my best estimate as to a proper figure.

Mr. CONSTANDY. OK.

Mr. COLLINS. It gave me a replacement cost of \$5,000.

Mr. CONSTANDY. You applied some depreciation?

Mr. COLLINS. Yes. I was checking my figures. I depreciated the building 35 percent.

Mr. CONSTANDY. How old was it?

Mr. COLLINS. That building appeared to be 30 to 35 years old.

Mr. CONSTANDY. This is another 100-year-old building. Is that right?

Mr. COLLINS. In that area.

Mr. CONSTANDY. Let me read from another part of your appraisal. In your description of that building it reads as follows:

There is a section used for cold-storage purposes. This area is 12 by 12 feet. There is a compressor pump used for the purposes of refrigeration.

Is that correct?

Mr. COLLINS. I didn't understand that, sir.

Mr. CONSTANDY. It is your description of that small building. It reads:

There is a section used for cold-storage purposes. This area is 12 by 12 feet. There is a compressor pump used for the purposes of refrigeration.

Is that right?

Mr. COLLINS. That's what it says. Yes, sir.

Mr. CONSTANDY. We have had earlier testimony from Mr. Myette, and we have introduced into the record an exhibit that was an exchange of correspondence between Mr. Myette and the tenant of that building, Mr. Goggins. One of the terms under which he rented that property was that he would be permitted to install the refrigeration equipment and to remove it after he terminated his tenancy. So that refrigeration equipment which you included in your description did not belong to the property, but belonged to Mr. Goggins.

Mr. COLLINS. That was not a part of my figure.

Mr. CONSTANDY. Then why do you have it in your appraisal? Were you trying to make the property sound better than it was, Mr. Collins?

Mr. COLLINS. No.

Mr. CONSTANDY. Then why put it in there?

Mr. COLLINS. That was the use of the "el."

Mr. CONSTANDY. I beg your pardon?

Mr. COLLINS. That was the use of the "el" and I put it in there.

Mr. CONSTANDY. I didn't understand that. You said the what?

Mr. COLLINS. The "el" of the building. I simply put it in there to describe what the use of that "el" was.

Mr. CONSTANDY. I think at the moment you will agree it was inappropriate.

Mr. COLLINS. It had no significance.

Mr. CONSTANDY. It might cause someone later looking at the appraisal to think this building was worth more than what they might otherwise have thought if they did not have that description.

Mr. COLLINS. That was not my intent.

Mr. CONSTANDY. It may not have been your intent, or it may have been, but the result is the thing we are concerned with here. It could have caused that erroneous impression, could it not?

Mr. COLLINS. It would have been erroneous, sir. Yes, sir.

MR. CONSTANDY. Under the section of your appraisal which you have entitled "Leases and Rentals" you referred to the Cloverleaf Farms rental of the dairy, and it reads as follows:

The warehouse is presently being used by the same concern. The rent is \$125 a month.

Where did you get the \$125 a month?

MR. COLLINS. I believe I obtained that figure from Mr. Goggins.

MR. CONSTANDY. Mr. Goggins should have known better, because he was only paying \$75 a month, and, as a matter of fact, Mr. Collins, didn't the figure \$75 a month appear on the real estate data sheet that accompanied your assignment to this property?

MR. COLLINS. That I don't know. I don't know.

MR. CONSTANDY. Again, wouldn't the fact that the rental was shown as \$125, it being in error, since we have heard testimony that the rent was \$75 actually—wouldn't it cause someone looking at the appraisal to draw an erroneous conclusion as to the value of the property?

MR. COLLINS. My appraisal was not made on an income basis. I paid no consideration to that at all.

MR. CONSTANDY. Maybe you didn't, but someone else might have. No, sir, you are right. Your computation was not on an income basis, nor could it have been, with \$125 rent that had to be considered with the value you found out.

MR. COLLINS. It would have been way out of line and way—

MR. CONSTANDY. You were expected to use each of the three approaches in making your appraisal, and thereafter correlating the differences between them. You only used one.

MR. COLLINS. That's right.

MR. CONSTANDY. In the other data that you attach to the one you use, you have several statements which are erroneous. This is one of them. Just to get you up to the figure you came out with, you had the railroad spur track figured at \$7,150, and the switch at \$5,000. Is it correct you got that information from Mr. Bailey?

MR. COLLINS. He was one I got it from.

MR. CONSTANDY. Who else?

MR. COLLINS. Another one was Mr. Burke, I got the figures from.

MR. CONSTANDY. Who is Mr. Burke?

MR. COLLINS. He was the tenant in the junk yard. I forgot the title of it.

MR. CONSTANDY. How would he know what the value of the track was as to what is on the ground?

MR. COLLINS. He was going to have to move it and was going to have to put a track in.

MR. CONSTANDY. And?

MR. COLLINS. In conversation with him I didn't know where he was going to move it, or what—

MR. CONSTANDY. Any knowledge he had would be secondhand, wouldn't it?

MR. COLLINS. No. He got it directly himself.

MR. CONSTANDY. I know, but you didn't.

MR. COLLINS. I got it from him.

MR. CONSTANDY. You're supposed to go and get it from someone more reliable than Mr. Burke, who is also concerned with putting the track in.

Mr. COLLINS. He just got a quotation.

Mr. CONSTANDY. Why didn't you get a quotation?

Mr. COLLINS. Because he was going to put in the spur track.

Mr. CONSTANDY. Why didn't you?

Mr. COLLINS. I did.

Mr. CONSTANDY. From Mr. Burke?

Mr. COLLINS. No, I confirmed the information I had from Mr. Burke.

Mr. CONSTANDY. You confirmed the information you got from Mr. Bailey?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Mr. Bailey is an expert in the business and you confirmed the information given you with a junkman, who was in the adjacent property?

Mr. COLLINS. That's right.

Mr. CONSTANDY. Why didn't you go to a railroad?

Mr. COLLINS. I called the railroad and conferred with them.

Mr. CONSTANDY. You did call the railroad?

Mr. COLLINS. Yes.

Mr. CONSTANDY. They all gave you the same figures?

Mr. COLLINS. No, they didn't all give me the same figures, but this was the result of information I got.

Mr. CONSTANDY. What figure did the railroad give you?

Mr. COLLINS. I don't know I have a note on that.

Mr. CONSTANDY. No. Are these figures the depreciated value of those tracks, or that track?

Mr. COLLINS. Yes, sir.

Mr. CONSTANDY. Aren't you obliged to show what the initial figure was and then apply certain depreciation to it? How would you expect anyone hereafter to believe your appraisal?

Mr. COLLINS. The depreciation to my mind of that spur track is negligible.

Mr. CONSTANDY. That is not the information we have, and there are other niceties in connection with the spur track you didn't mention here, like what type of ballast it had, and whether it includes new track or old, and whether it includes draining and grading. None of those show on the appraisal.

Mr. COLLINS. That's right.

Mr. CONSTANDY. And these are things the person making the appraisal needs to be concerned with if he expects to come out with a solid figure on the appraisal value. On the fence you used \$850, and again you don't show how you arrived at it, nor whether it represented depreciated value or replacement value, new, without depreciation.

Mr. BEASLEY, I believe you testified earlier that you had made certain analyses of the appraisals submitted to the department of public works by Mr. Hopkins, Mr. Schwartz, Mr. Collins, and Mr. Lawton.

Mr. BEASLEY. Yes, I did.

Mr. CONSTANDY. Could you tell us what your findings were concerning Mr. Schwartz' appraisal?

Mr. BEASLEY. As I reported to the Bureau of Public Roads, Mr. Schwartz' appraisals consisted of 17 pages of testimony plus exhibits, and the majority of the information contained within his report was

either furnished to him by the department of public works or taken from—or other than forms or maps and pictures. And altogether there were no more than four or five pages of information concerning the subject property, and the only figures pertaining to value were found on page 16 of this report.

MR. CONSTANDY. You understand in the course of making the assignments to fee appraisers that the State furnishes them with certain information and material and data, plans and maps. Is that correct?

MR. BEASLEY. That is correct.

MR. CONSTANDY. And out of the 17 pages of Mr. Schwartz' appraisal we find Mr. Schwartz giving back to the State some 13 pages of material they had initially given him. Is that correct?

MR. BEASLEY. That is correct.

MR. CONSTANDY. And four or five pages of his appraisal report represent his own contribution?

MR. BEASLEY. That is correct.

MR. CONSTANDY. Could you tell us about his contribution?

MR. BEASLEY. Page 16 contains a summary of figures as follows:

Thirty-two thousand five hundred square feet of land at 65 cents a square foot, or \$21,525. Structure——

MR. CONSTANDY. May I interrupt you, Mr. Beasley?

MR. SCHWARTZ, could you tell us how you arrived at 65 cents? That was on the basis of the information you received from the city tax assessor's office?

MR. SCHWARTZ. It was on the basis of information I received. Yes

MR. CONSTANDY. Making certain adjustments for the differences in the property?

MR. SCHWARTZ. Making certain adjustments, and realizing that the Damort property had a railroad siding and a spur track, which I also took into consideration, which the commercial property on Washington Street did not have.

MR. CONSTANDY. Right. I just want to understand this. You used four of the same five comparables Mr. Collins had. The four you used were entirely on U.S. 1, and all zoned commercial. The property you were appraising was zoned industrial, off U.S. Route 1. Three of the four properties you used had a value generally, at least because of the buildings contained on them, which led to the sales price that was given to you.

Would you go on, Mr. Beasley?

MR. BEASLEY. The next item was structure: Lumber storage, \$30,000.

MR. CONSTANDY. That is the whole thing?

MR. BEASLEY. That's it.

MR. CONSTANDY. Yours is even more simplified than Mr. Collins', Mr. Schwartz. How did you arrive at \$30,000 as the value of the lumber shed?

MR. SCHWARTZ. I used the square footage of the building and multiplied it by \$4.50 a square foot that I figured the property would cost at that time after deducting the depreciation. Now, what depreciation I used at the time I don't know.

MR. CONSTANDY. You say you don't know now?

MR. SCHWARTZ. I don't know at the present time. No, sir.

MR. CONSTANDY. Maybe you know what you used against \$4.50. How many square feet were there in the building?

Mr. SCHWARTZ. I just figured this the other day here in trying to remember what I did here, and it figured about 6,930 square feet. It comes out to \$31,185, and I called it \$30,000.

Mr. CONSTANDY. It came out to what?

Mr. SCHWARTZ. \$31,185. These are notations I made.

Mr. CONSTANDY. \$31,185, and you reported a value of \$30,000 after applying depreciation?

Mr. SCHWARTZ. No. That was after the depreciation. I used the \$4.50 figure. I don't know what figure I used at the beginning. I haven't anything with me. I just made this notation to bring this out, and that's what I started to mention to you yesterday, and this figure, in other words, the figure I have on here is the depreciated figure or value for the property.

Mr. CONSTANDY. May I interrupt and ask you this?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Are you saying the figure of \$4.50 represents the depreciated value per square foot of the building?

Mr. SCHWARTZ. Yes, sir. This building was approximately 20 feet high and it was 110 by 63 feet wide, and in my opinion it would cost approximately \$4.50, and would have cost much more than \$4.50, but the value at the time I appraised it was approximately \$4.50 per square foot.

Mr. CONSTANDY. It is simply a finding on your part?

Mr. SCHWARTZ. That is correct.

Mr. CONSTANDY. Without anything to back it up? I would like to know what figure you used before applying depreciation.

Mr. SCHWARTZ. I don't know, sir.

Mr. CONSTANDY. Did you know at any time, Mr. Schwartz, or did you begin with the figure you intended to put down as the value of that building, and have since gone through some arithmetical gymnastics to try to justify it?

Mr. SCHWARTZ. I don't remember what figure I used at the time, but I do know and have spoken to a couple of people since this Damort—

Mr. CONSTANDY. I prefer that we confine our discussion here to those things and the discussion you had prior to the date and up to the time you submitted the appraisal report. Did you make computations at the time you made the appraisal?

Mr. SCHWARTZ. I did.

Mr. CONSTANDY. Do you have them?

Mr. SCHWARTZ. No, sir, I haven't.

Mr. CONSTANDY. What happened to them?

Mr. SCHWARTZ. I don't have them with me. I was not told to take anything. I don't know where they are.

Mr. CONSTANDY. Do you have them at home?

Mr. SCHWARTZ. I don't know, sir. This is over 2 years ago, and I don't keep a lot of stuff around.

Mr. CONSTANDY. I can understand that. You found the value for the building after depreciation of \$30,000, and you can't here today tell this committee how you arrived at it. Is that correct?

Mr. SCHWARTZ. That is correct.

Mr. CONSTANDY. I suggest to you, Mr. Schwartz, you began with a figure of \$30,000 and simply inserted it.

Mr. SCHWARTZ. Some buildings are worth as much today, or more today, than what they were when they were built.

Mr. CONSTANDY. That may be true. We are not concerned with some buildings, but a very specific building, and particularly the one of the Damort property. You have submitted to the State of Massachusetts an appraisal in the sum of \$67,000 for that property. At the time they assigned it to you they expected that you would at some time thereafter be capable to go into court and testify as to the value that you found; that you would be able to produce those things that led to your finding of that value, and be able to substantiate it in court if subjected to cross-examination.

You appear here today and you can say nothing further about the \$30,000 except if you divide it backward it comes out to \$4.50 a square foot. I can do that, Mr. Schwartz. The big question is how you arrived at \$4.50, and what it was before depreciation.

Mr. SCHERER. May I ask a question, Mr. Chairman?

Mr. FALLON. Mr. Scherer.

Mr. SCHERER. Is what counsel said to you correct?

Mr. SCHWARTZ. Pardon?

Mr. SCHERER. Counsel just made a long statement to you with reference to your conduct in this thing.

Mr. SCHWARTZ. Yes.

Mr. SCHERER. Is what he said true?

Mr. SCHWARTZ. Which part of it?

Mr. SCHERER. Well, all of it. That is the reason I am asking. There were quite a few things he accused the witness of in making this appraisal, and I want to know whether the witness will agree that all counsel said in the statement just concluded is true.

Mr. SCHWARTZ. The statement that he made that I agreed on \$30,000 in advance is not true, Mr. Congressman.

Mr. SCHERER. Any other part of his statement not true?

Mr. SCHWARTZ. I haven't the figures that I used, and that he is definitely correct on those assumptions that I do not have them and I should have them with me. But in the subpoena nothing was said about bringing anything with me at all. But I did take some of the appraisals that I did in Attleboro, because that was the understanding, that a lot of the questions were on Attleboro.

Mr. CONSTANDY. Isn't this in Attleboro?

Mr. SCHWARTZ. Yes, and that's why I took the appraisal with me.

Mr. CONSTANDY. I think the situation speaks fairly clearly for itself, Mr. Schwartz. We find the same situation in regard to your value for the milk store. Both of them happily come out to be very nice, round numbers. The lumber shed is \$30,000 and the milk building is \$3,000, and in neither of them can you explain how you arrived at it and what else you used either for the square foot or cubic foot value. Nor do you disclose what depreciation you applied to it.

Mr. SCHWARTZ. I do not have it with me.

Mr. CONSTANDY. Do you have them at home?

Mr. SCHWARTZ. I don't know, sir.

Mr. CONSTANDY. I request the chairman to direct the witness to produce them before the committee. I refer to the notes, or papers, or any data you have which relate to the computation with your appraisal for the Damort Land Co. property.

Mr. SCHWARTZ. I don't keep a lot of those things. When these things are completed, a lot of these notes and everything else is discarded.

Mr. CONSTANDY. You think you don't have them?

Mr. SCHWARTZ. I personally don't think I have them, because most of this stuff when I get through I just don't hold it.

Mr. FALLON. Counsel asked the Chair to ask you to submit these figures to the committee, Mr. Schwartz. Can you do that?

Mr. SCHWARTZ. I don't know, sir. I don't think I have it.

Mr. FALLON. Mr. Schwartz, will you search your records when you go back home and see if you have them, and then submit them to the committee?

Mr. SCHWARTZ. Yes, sir. If I have them, I will be glad to.

Mr. CONSTANDY. I will just read the other factors which led to your finding of \$67,000, Mr. Schwartz. You have 375 feet of 6-foot chain link fence at \$1,000. You have 475 feet of railroad spur track at \$15 a foot, or a total of \$7,125. You have a railroad switch estimated at \$4,500. Might I ask you where you got the figures that related to the track?

Mr. SCHWARTZ. I got them from a railroad employee, sir.

Mr. CONSTANDY. Any particular railroad employee?

Mr. SCHWARTZ. Yes, sir. A Mr. Reback.

Mr. CONSTANDY. Do they represent the depreciated value?

Mr. SCHWARTZ. To be honest with you, I don't know.

Mr. CONSTANDY. I would like to inform you, Mr. Schwartz, we made inquiry, too, about railroad track, and found that you can have installed today railroad track at \$15 a foot. That is true. We are not talking about railroad track installed today, but are talking about depreciated value of this particular railroad track.

Mr. SCHWARTZ. I may not have depreciated it. What the price is I did not depreciate.

Mr. CONSTANDY. To that extent your appraisal is inaccurate. Is that right?

Mr. SCHWARTZ. If the figures you have and what you say is so, they are.

Mr. CONSTANDY. Don't predicate it on what I say. I want to know from you whether you depreciated it.

Mr. SCHWARTZ. I'm sorry, Counsel. I don't remember.

Mr. CONSTANDY. You think they might not be depreciated?

Mr. SCHWARTZ. I think they might not be.

Mr. CONSTANDY. Mr. Beasley.

Mr. BEASLEY. The summary of value before taking was \$67,150. There is a title, "Value After Taking," and a listing of 3,000 square feet of land at 5 cents a square foot, with a parenthesis notation, "Nominal," and a \$150 aside. The \$150 is deducted from the \$67,150, rounding his total damages to \$67,000 to be paid by the department of public works to the property owner for this.

Mr. CONSTANDY. Is it reasonable, Mr. Beasley, that this land at 65 after the taking is only worth a nickel?

Mr. BEASLEY. In my opinion, no, sir.

Mr. CONSTANDY. What in your opinion would it be worth after this taking?

Mr. BEASLEY. May I read my opinion first? Just 1 second.

I do not have that figure right here before me, but it was in the neighborhood of 10 to 15 cents a square foot. However, I would say that the values that we arrived at originally before the taking are much less than this 60 cents a square foot.

Mr. CONSTANDY. So the actual value on your own computation would have increased less than it is here?

Mr. BEASLEY. Yes.

Mr. CONSTANDY. But it is reasonable to expect that the remaining land would be less than what it was because of the smaller remaining piece?

Mr. BEASLEY. That is correct; it was a small remaining piece.

Mr. CONSTANDY. Could you continue, then, please?

Mr. BEASLEY. The analysis, continuing to use the 65 cents per square foot assigned for land, Mr. Schwartz on page 15 of his report itemized three real estate transactions which took place in 1953, approximately 6 years prior to his appraisal.

These sales involved the assembly of ground in Washington and Turner Street, approximately two and one-half blocks east of the subject property, for a supermarket which was built by the First National Stores of Boston.

The fourth sale, also located on Washington Street, approximately a quarter of a mile north of Rhode Island State line, in Attleboro, involved the assembly of land for a supermarket built by Almac, Inc.

Mr. Schwartz includes no other market data in his report and states that he relies on these two supermarket locations for his development of value assignable to the Damort Land Corp. land.

I might say there is no relation between these supermarket corporations and the Damort Corp. property.

Mr. CONSTANDY. How do you mean that, Mr. Beasley, they are not comparable?

Mr. BEASLEY. They are not comparable. As a matter of fact, Washington Street, as it passes through South Attleboro, is also known as U.S. Highway 1, and it is a major business thoroughfare in this community.

The land sale involves business property, whereas the Damort Land Corp. property is light industrial. There is a marked distinction.

Mr. CONSTANDY. Just skip over the recitation again of those same comparables. You have read those for the record. Could you continue the discussion of Mr. Schwartz' appraisal? Could you tell us whether these same transactions did, in fact, appear in Mr. Collins' appraisal?

Mr. BEASLEY. Mr. Collins used the identical four sales as those reported by Mr. Schwartz; namely, the Old Colony Advertising Co. to First National Stores, William Walsh to First National Stores, Ralph York to First National Stores, and Whitman's Diner, Inc. to Almac's, Inc. Mr. Collins adds a fifth sale, which is the Perrier Land Co. to John Bourque. This additional transaction is for 4.67 acres, or 203,570 square feet of land purchased in 1955 for \$10,500, or \$2,248 per acre.

Mr. CONSTANDY. That would be approximately 5 cents a square foot?

Mr. BEASLEY. That is approximately 5 cents a square foot.

Mr. CONSTANDY. The 5-cent land is located where in relation to the Damort property?

Mr. BEASLEY. It is adjacent, the particulars to it fronting on Allen Street.

Mr. CONSTANDY. Mr. Collins assigned, at least as his appraisal report states—and, Mr. Collins, I would like to point out that where there is an inconsistency in your report between the unit price and the extended total value, anyone reviewing the appraisal has to be guided by the unit price and assume that the error is in the mathematics extending that, is that correct?

In other words, they used your 60 cents. We have used the 60 cents and our comments will be based on the fact that you incorporated in your appraisal 60 cents, rather than 50. We will assume that your extension is the one that is in error.

Mr. COLLINS. I used 50 cents in computing the value of the land, but the typed figure is 60. That is a typographical error.

Mr. CONSTANDY. It is hard to say. At the moment we have only that material which was submitted to the State and in that report you submitted a figure of 60 cents a square foot.

Mr. COLLINS. That is right, I did. It is an error.

Mr. CONSTANDY. Leaving uncertainty whether the error is in the unit price or whether it is in the extension of multiplying the unit price times the number of feet there?

Mr. COLLINS. No, sir.

Mr. CONSTANDY. You are saying today that the error should be 50. We had no way of knowing prior to this, and we will continue on the basis that, as you reported it, is the way that you intended it to be reported at 60 cents?

Mr. COLLINS. No, sir; I did not.

Mr. CONSTANDY. 60 cents figures out to how much an acre, Mr. Beasley?

Mr. BEASLEY. Approximately \$26,136 an acre.

Mr. CONSTANDY. And 65 cents?

Mr. BEASLEY. \$28,314 an acre.

Mr. CONSTANDY. To give some indication of the kind of money we are talking about, when you speak of 60 or 65 cents per square foot projected to a unit that we can comprehend, an acre comes out to an appreciable amount of money: In the one case, \$26,136, and in the other one \$28,314.

Mr. Beasley, were there other sales in the immediate vicinity of the Damort property which could have been used by a fee appraiser in making the appraisal at that time? Did you find others?

Mr. BEASLEY. There were six or eight good industrial sales in the immediate vicinity of the Damort Land Corp.'s property which, when properly analyzed, indicated land values ranging from 5 to 18 cents a square foot.

Mr. CONSTANDY. You say there were six or eight industrial sales within the area.

With diligence, an appraiser could have discovered and used those sales and that would have led to a unit price of 5 to 18 cents a square foot?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. Is that correct?

Mr. BEASLEY. That is right.

Mr. CONSTANDY. What comment do you have to make about those?

Mr. BEASLEY. These sales were more current and more comparable to the Damort Land Corp. property than the four sales contained in

Mr. Schwartz's and Collins' appraisal dealing with the supermarkets.

Mr. CRAMER. Do I understand, then, that you think comparable values, which is one method of fixing the land value, then, is 5 to 18 cents a square foot?

Mr. BEASLEY. That is correct, sir.

Mr. CRAMER. And Mr. Schwartz ended up fixing the land value at 65 cents per square foot, is that right?

Mr. BEASLEY. The one item, yes, sir.

Mr. CRAMER. That is one of the items.

Mr. CONSTANDY. Mr. Beasley, did you make a check of the comparable sales as listed by both Mr. Schwartz and Mr. Collins in their appraisal reports?

Mr. BEASLEY. I checked with the buyer or the seller in each instance and confirmed the sales and I further secured a certified abstract of recorded instruments and legal information from the land records in the city of Attleboro.

Mr. CONSTANDY. This is important. Both Mr. Collins and Mr. Schwartz submitted to the department of public works a sale which was the basis for their finding of 60 and 65 cents, respectively.

For land values to justify those figures of 60 and 65 cents, there must be a relationship between that figure and the comparable sales. In other words, the comparable sales had to be reported accurately to justify 60 and 65 cents, is that correct?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. What did you find, Mr. Beasley, in connection with, let us say, Whitman's Diner for Almac? They both reported that as being a sale on November 26, 1956, reported in book 1233, page 235, involving—and I want you to note this, Mr. Collins and Mr. Schwartz—48,224 square feet of land and buildings at \$50,000, or \$1 per square foot.

Mr. Beasley, was the information accurate as reported?

Mr. BEASLEY. No, sir; it is not. In fact, the persons selling the Almac was not Whitman's Diner, Inc., and the land area involved was not 48,224 square feet. It was 126,684 square feet.

Mr. CONSTANDY. They reported that sale of \$50,000 to represent 48,000 some odd square feet of land when, in fact, an inquiry to the records disclosed that the \$50,000 sale was for the purchase of 126,684 square feet.

By my computation that would change the dollar-per-square-foot value which you suggested to the department of public works to 39 cents, taking a commercial sale on U.S. Route 1 and comparing it to an industrial property a block off U.S. 1.

You reported \$1. It was worth 39 cents. You, Mr. Collins, used either 50 or 60 cents. You, Mr. Schwartz, used 65 cents. Did you view this sale, Mr. Collins?

Mr. COLLINS. Sir?

Mr. CONSTANDY. Did you view this sale?

Mr. COLLINS. Did I view it?

Mr. CONSTANDY. Yes, did you go look at this property?

Mr. COLLINS. Yes.

Mr. CONSTANDY. Whitman's Diner for Almac?

Mr. COLLINS. I drove by the site at the time I was doing the appraisal. I thought the information I had was accurate, which I got from the assessor's office. They got copies from the registry of deeds.

To the very best of my knowledge, I believed that the information I was using was accurate. If the facts are as Mr. Beasley states them, I did not know it until this minute.

Mr. CONSTANDY. I am sure. Mr. Schwartz, did you view the sale that you listed, Whitman's Diner for Almac?

Mr. SCHWARTZ. Yes, I drove up to the site and viewed the site, and, as Mr. Collins just mentioned, to this present minute I have been under the impression that the figures that I have here are correct, and this 100-and-some-odd-thousand feet that he came up with is unknown to me, unless there were two parallels there, and the gentleman that gave us the information did not pull out the two cards.

Now, that sometimes can happen. Were there two cards in this case or were there one, Mr. Beasley, do you know? Excuse me, I apologize.

Mr. CONSTANDY. Mr. Schwartz, if you will let us pursue, I think we may be able to resolve.

Mr. SCHWARTZ. I am just curious.

Mr. CONSTANDY. You both went to the city hall. You both went to see the assessor, and that is in Attleboro, and you spoke with a man by the name of Mr. Byrne, is that correct?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Mr. Byrne has been contacted. He states to us that he has a working arrangement with the Bristol County Registry of Deeds, in Taunton, Mass., which is the place at which transfers of titles would be officially recorded within that county.

That is the place where real estate transactions are recorded, not in the tax assessor's office.

Mr. Byrne said that he had supplied certain cards to the registry office and that whenever a deed is recorded within the registry office, which comes within the jurisdiction of the city of Attleboro, under his working arrangement that card is made out containing the basic data of the transfer of the real estate and the card is sent to his office to become incorporated in his files.

Mr. Byrne stated that these cards are not normally given to the public to use, but he does say that on occasion appraisers will come by and make inquiry about a particular parcel of land.

He says that this card becomes an index; that it is thereafter possible for an appraiser to take the book and page number of that record of sale and use it as a guide when he gets to the registry in Taunton to then find out the particulars on the transfer. I have here a certified copy of the sale which each of you have reported.

You reported this as the same No. 1233, page 235. You represented it to the State as a sale from Whitman's Diner, Inc., and I spell that W-h-i-t-m-a-n, to Almac. The deed that we have here, which is recorded in page 1233, book 1233, page 235, is a transfer of real property from Mr. John Bellegris, Godfrey Bellegris, and Emanuel Tomadjoglou, Ancoula, with the same last name, his wife, to Almac's.

Here is the deed of the sale that you reported. This comes from the registry at Taunton. It shows that the sale was not from Whitman's to Almac, but it shows that it was from Mr. John Bellegris and others to Almac. This is the book, page number and date that the sale was reported.

Mr. Byrne, who has a familiarity with properties in the city of Attleboro, stated that at one time that property had been owned by a man named Wightman, W-i-g-h-t-m-a-n, and he operated a diner on that site, and there came a time when he transferred that property to John Bellegris and others.

Now, Mr. Byrne made available to us copy of the card that he has in his file, which records this sale, not Whitman, but Bellegris to Almac. His card does not contain any square foot area, nothing.

Maybe you can tell us, Mr. Collins, where in the tax assessor's office with such a card you would find the square foot area.

MR. COLLINS. I cannot explain it any further than I have already done. The information that I had in my report came from the tax assessor. I believed it to be accurate.

MR. CONSTANDY. Wait, wait. You copied from Mr. Schwartz in the tax assessor's office, correct?

MR. COLLINS. Mr. Schwartz wrote the information down and I got the information from Mr. Schwartz. We were both there at the time.

MR. CONSTANDY. You were both there at the time. Did you make inquiry as to any other document in the tax assessor's office other than this card at the time you visited and got this sale?

MR. COLLINS. I did not, no, sir.

MR. CONSTANDY. Did you, Mr. Schwartz?

MR. SCHWARTZ. I did not get the question, but if you would like to repeat it, I would appreciate it.

MR. CONSTANDY. Yes. At the time you visited the tax assessor in the city of Attleboro, and were shown this card and from it copied, did you learn from the card any area?

MR. SCHWARTZ. As far as these cards are concerned—

MR. CONSTANDY. Just answer my question, if you will.

MR. SCHWARTZ. I have to answer this in a little different way. I cannot answer with a yes or no.

MR. CONSTANDY. Go ahead.

MR. SCHWARTZ. I would appreciate your bearing with me. But when this Mr. Byrne showed us this information or told me the information, he then would go to a book and to me he said the Wightman Diner, Inc.—and that is the name that he used. Now, these other two names that you just came out with that are on the deed that are recorded in Taunton, I never checked Taunton registry on this here, and I do not know.

This name was given to me by this Mr. Byrne, and, to his knowledge, he most likely was under the impression that it was the Wightman Diner, or I misunderstood him while he was explaining to me what it was, it was the Wightman Diner.

I have been in the Wightman years and years ago, and I knew where the property was when he explained it to me, and I knew it was the Wightman Diner.

All right, I spelled it wrong. In writing it down, I spelled it wrong, but when he gave you the information, or told us the information, he would take a book which had a plat—plan of some of the towns and some of them were very, very incomplete, and I would say to him how many square feet are there on there, and he would look at the book or he looked at the book—I don't know whether I looked at it or he looked at it—and those are the figures that I took off at the time.

MR. CONSTANDY. Did you look at the book?

Mr. SCHWARTZ. I don't remember, but that is where the figures came from. They may not be on that chart.

Mr. CONSTANDY. They did come from there? Just wait 1 minute, Mr. Schwartz. He does have a book and the book does have the plat, and the plat does have the area for each parcel, and I will read you these and you see if you can put any combination of them together to come out with 48,000:

25,000; 31,059 square feet—

Mr. SCHWARTZ. 31,050?

Mr. CONSTANDY. And 59—31,059; 45,000 square feet, 12,665 square feet, 6,468 square feet.

Mr. SCHWARTZ. Pardon, what was that last one?

Mr. CONSTANDY. 6,468 square feet.

They total—he is in error—120,192 square feet. That is what is represented in the record at the city tax assessor's office in Attleboro. If you got them from him, it would have been necessary for you to have perhaps taken part of them or taken some combination—

Mr. SCHWARTZ. That is what I am trying to look for a combination.

Mr. CONSTANDY. We will not hold up while you look, because you will be there a long time.

Mr. SCHWARTZ. There isn't any?

Mr. CONSTANDY. No, there isn't.

Mr. CRAMER. May I ask a question, Mr. Chairman? Isn't part of your contract with the State in acting as a fee appraiser that you agree to appear in court and testify as to the matters contained in your appraisal?

Mr. SCHWARTZ. Yes, sir.

Mr. CRAMER. If you have no better preparation than this in carrying out the conditions of that contract, and \$100 a day bonus or fee for appearance—if this is the best preparation you have for that appearance to protect the interests of the taxpayers before the court, if necessary—do you think that conforms to your contract with the State?

Mr. SCHWARTZ. I do not know.

Mr. CRAMER. That is part of your contract, isn't it? When you were paid—how much was it—\$2,500 for doing eight of them—

Mr. SCHWARTZ. Twenty.

Mr. CRAMER. \$2,500. Part of that obligation, in order for you to collect the money, is that you qualify yourself, prepare yourself, have adequate data and information, to be equipped to testify in court on behalf of the State, if need be. Now, isn't that part of your contract?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. Do you think you have fulfilled your contract under the form that you, yourself, filed on page 17, if you will refer to it there, which I assume is the form of the National Association of Real Estate Boards, in the last paragraph that:

The appraiser herein certifies that, to the best of his knowledge and belief, the statements and opinions contained in this appraisal, subject to the limiting conditions above set forth, are correct—

and this is the further important clause—

Also, that this appraisal has been made in conformity with the rules of professional ethics of the American Society of Appraisers, of which society the appraiser is a member.

Do you think that you are conforming to those ethics, if you do not even conform to and comply with the contract that you entered into with the State, meaning, in one instance, preparing yourself to go to trial, if need be? Do you think you did that in this instance?

Mr. SCHWARTZ. I think so.

Mr. CRAMER. I would not like to be a judge sitting with the testimony you have presented to this committee, trying to fix the value of this property, based upon the substantiation that you have tried to submit, which is practically nil. And you say you do not know if you have, and you do not think you have, any records at home.

Now, what are the ethics of the American Society of Appraisers? Maybe I do not understand what the ethics are. You are a member. Now, tell us what the ethics are. What are the standards?

Mr. SCHWARTZ. I cannot go into all of those ethics of the American Society of Appraisers at this time.

Mr. CRAMER. Isn't one quite clear based upon this statement which you filed? This is your statement in the appraisal. You filed this statement, and one of those conditions is that you shall not file a false report, and all the facts contained in this, to your knowledge, are true.

Mr. SCHWARTZ. To the best of my knowledge, everything in there that I have filed is true.

Mr. CRAMER. Is it not obvious——

Mr. SCHWARTZ. That is the main thing in this whole ethics, as far as that is concerned.

Mr. CRAMER. Is it not obviously a part of ethics of any businessman, appraiser or otherwise, if he enters into a contract, to live up to it when he collects the money under it; that he has conformed to that and complied with that contract? Do you not think——

Mr. SCHWARTZ. Yes.

Mr. CRAMER (continuing). That is a general test of business ethics?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. And properly a test under the professional ethics of the American Society of Appraisers?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. And you are telling this committee that you lived up to that standard of ethics when this is all the information you could present if you were required to do so in court?

Mr. SCHWARTZ. That is right.

Mr. CRAMER. Sir?

Mr. SCHWARTZ. Yes, sir.

Mr. CRAMER. I do not think you have a very high standard of ethics, then, if you think you conform to this contract, when you are not able to present any substantiating, valid background information to testify to, if need be, before the courts. That is part of your contract, part of your obligation. That is why you are paid \$2,500, part of it. That is all.

Mr. CLARK. Do you not think you were just a little bit slipshod in doing this appraising?

Mr. CRAMER. If you would strike out "little bit," that would be a good question, Mr. Clark.

Mr. SCHWARTZ. Yes.

Mr. COOK. Mr. Schwartz, I would like to ask you, with reference to ethics, it is my understanding that you and Mr. Collins shared

information with reference to this property; is that correct?

Mr. SCHWARTZ. Yes, as far as what has been brought up here today.

Mr. COOK. I was not here this morning when you testified at the beginning of the hearing, but had you appraised property for the State prior to this group, on this particular Damort property?

Mr. SCHWARTZ. Yes.

Mr. COOK. Was it not your understanding that, as a fee appraiser, that your appraisal was a secret appraisal as far as all other appraisers on that piece of property were concerned?

Mr. SCHWARTZ. There was nothing that we discussed as far as—yes.

Mr. COOK. Then why did you share your information and the basis for your eventual judgment on this property with Mr. Collins?

Mr. SCHWARTZ. Appraisers all over the country compare and help one another, as far as comparable sales are concerned, at different times, and, in my opinion, I was not doing anything wrong when I went with Mr. Collins or shared these comparable sales with him. He was with me when we got these comparable sales from Attleboro.

Mr. COOK. You did not feel from the very beginning of your assignment that you should carry on an independent survey of this particular piece of property; that is, from the very beginning, the gathering of information on which you would base your final judgment as to the value of this property? You did not feel there was any restriction upon you to gather that information for your own purposes, apart from what Mr. Collins might do for his own purposes?

Mr. SCHWARTZ. Some of the preliminary work, no, but the final calculation or final estimating of the property, I did not confer with Mr. Collins or anyone.

Mr. COOK. But as I get the picture, the two of you are basing your final conclusions on more or less the same facts, is that not true?

Mr. SCHWARTZ. On comparable sales, yes.

Mr. COOK. And Mr. Collins got some information from you and you got some information from Mr. Collins on comparable sales; is that correct?

Mr. SCHWARTZ. No, we both got them together the same day in the city hall.

Mr. COOK. When Mr. Collins testified a moment ago that he copied them from you, I believe—

Mr. SCHWARTZ. Well, we are right in the city hall in front of the gentleman in charge.

Mr. COOK. You actually went together to the city hall?

Mr. SCHWARTZ. To the city hall.

Mr. COOK. You do not believe that this is a violation of ethics as far as your duty to the State to report an independent opinion, independent from the State's appraiser?

Mr. SCHWARTZ. No.

Mr. COOK. From the other fee appraiser as to what the value of that piece of property is?

Mr. SCHWARTZ. I did not at the time.

Mr. COOK. Do you feel it is now?

Mr. SCHWARTZ. I feel it is now.

Mr. CRAMER. Would the gentleman yield?

Mr. COOK. Yes.

Mr. CRAMER. How do you become a member of this organization? Do you have to take an examination? What background do you have

to give them to become a member of the American Society of Appraisers?

Mr. SCHWARTZ. You give them your name, your address, what you do, and what organizations you belong to, and they check you up. They most likely have someone that looks into your background or something, and I was accepted.

Mr. CRAMER. And, being a member of this organization, you at that time did not know what an "independent appraiser" was?

Mr. WENDER. I do not understand that.

Mr. CRAMER. He says he thinks it is all right to get information from someone else appraising the same property.

Do you not think that is a dependent rather than an independent appraisal? You know the difference between those words, do you not? Counsel does not have the right to coach the witness now. I am asking the witness a question. I do not think he does, does he, Mr. Chairman?

Mr. FALLON. I did not hear the question.

Mr. CRAMER. Will you answer the question? Do you know the difference between a "dependent" and "independent" appraisal?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. You know you have a duty, do you not, to turn in an independent rather than a dependent appraisal, do you not?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. Why did you not do it in this instance?

Mr. SCHWARTZ. I know it now. As I explained to the other Congressman, I did not think there was anything wrong in going with another appraiser to get comparable sales or other information pertaining to the building, but I do know it now.

Mr. CRAMER. Again, we have the statement which you filed with the appraisal itself which states, as follows:

The distribution of the total value estimate between its constituent elements applies only to the current utilization of the subject property. Such distributed values may not be used to create a summation appraisal by combination with value estimates of any other appraiser. Any is invalidated, if so used.

Does that not speak for itself?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. Does that not tell you what an independent appraisal is intended to be?

Mr. SCHWARTZ. Yes.

Mr. CRAMER. You must not have read it, then, did you? You filed it. It is a part of your appraisal. You must not have read it. Did you?

Mr. SCHWARTZ. I must have read it.

Mr. CRAMER. If you read it, then you did not understand it, did you?

Mr. SCHWARTZ. It is possible.

Mr. CRAMER. From the evidence it appears obvious. Now, Mr. Collins, I want to address the same questions to you. Do you know what an independent appraisal is?

Mr. COLLINS. Yes, sir.

Mr. CRAMER. Did you know what it was at that time?

Mr. COLLINS. Yes, sir.

Mr. CRAMER. Do you think you were conducting an independent appraisal by going with another appraiser and discussing it?

Mr. COLLINS. I felt that; I felt and feel now that my appraisal was done in an independent manner; but I do not think it is at all prudent or wise to go with another appraiser to the same property that you are appraising yourself. That is how I felt about it at the time. I feel about it the same way now.

Mr. CRAMER. But you did it?

Mr. COLLINS. I did it.

Mr. CRAMER. You did it?

Mr. COLLINS. I did.

Mr. CRAMER. You know now it is wrong. Would you do it again?

Mr. COLLINS. No, sir; I would not.

Mr. COOK. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. COOK. Mr. Collins, is it not true that in the letter from the department of public works authorizing you to make this fee appraisal in behalf of the State, were you not told in that message from the State that your report was to be a confidential one?

Mr. COLLINS. Yes, sir.

Mr. COOK. You agree now that if you share information, you pooled information, as the two of you did——

Mr. COLLINS. The only information that we shared is a matter of public record.

Mr. COOK. As I understand your testimony a few moments ago, you are willing to admit now that this was not the correct approach, as far as providing the independent and confidential survey that was requested by the State?

Mr. COLLINS. Much better not to do it.

Mr. CRAMER. Do you think you are prepared to testify in a court, Mr. Collins?

Mr. COLLINS. I have testified to the court many times.

Mr. CRAMER. Not on this property?

Mr. COLLINS. No, sir; not on this property.

Mr. CRAMER. Were you equally poorly prepared on those other properties as you are on this?

Mr. COLLINS. I always felt that I was well prepared.

Mr. CRAMER. About as well as on this property; is that right?

Mr. COLLINS. I thought I was well prepared on this property.

Mr. CRAMER. That is what I say: About as well prepared as you were on this property?

Mr. COLLINS. That was my feeling.

Mr. CRAMER. Which, again, if I were a court sitting and trying to determine how you came to the conclusions you did, I do not think I could ever, in my judgment, come to a conclusion, because you cannot justify it. You have not justified your figures here whatsoever, in my opinion. And this is what you have contracted to do, is it not, to be prepared to go into court to testify, if need be?

Mr. COLLINS. Yes, sir.

Mr. CRAMER. And you say you have done that in other cases?

Mr. COLLINS. Many times.

Mr. CRAMER. It is no wonder the State of Massachusetts has paid as much as they have for right-of-way, if they use witnesses like you and Mr. Schwartz.

Mr. SCHWENGEL. Mr. Chairman, I would like to address this question to Mr. Schwartz first. How long have you been a fee appraiser for the State of Massachusetts?

Mr. SCHWARTZ. 1957.

Mr. SCHWENGEL. Since 1957. Do you have any idea on how many parcels of land or properties that you have appraised in that time?

Mr. SCHWARTZ. I haven't.

Mr. SCHWENGEL. You will develop that?

Mr. CONSTANDY. We did yesterday, pointing out that Mr. Schwartz began appraising on October 14 of 1957. Since that time he has received 26 assignments to appraise 86 parcels of land at a total fee of \$18,350; and that, in addition to that, he received some \$1,100 at the rate of \$100 a day for his expert testimony in courts relating to those appraisals.

Mr. Schwartz conceded yesterday that at the time he was initially assigned by the department of public works, he had, in fact, never performed an appraisal before.

Mr. SCHWENGEL. I understand that. I would like to follow up with this question: Has the pattern that has been revealed here, Mr. Schwartz, been the pattern that you have followed in all of these cases?

Mr. SCHWARTZ. No, Congressman.

Mr. SCHWENGEL. In what way were they different? How did you approach these other cases?

Mr. SCHWARTZ. Well, plenty of these other cases, most of these other cases, I might have been alone or with no other appraiser working for the State. It just happened that these were out of town, and that is how that came about.

Mr. SCHWENGEL. What I am getting at: Is the rule that you applied to get the evaluation, would it have been about the same in every instance?

Mr. SCHWARTZ. To go to the city hall and so forth?

Mr. SCHWENGEL. Yes; the general pattern.

Mr. SCHWARTZ. The general pattern; yes.

Mr. SCHWENGEL. To get the valuation has been the same in every case?

Mr. SCHWARTZ. Yes, sir.

Mr. SCHWENGEL. You have testified a few minutes ago that what you did and have been doing was a slipshod manner of doing things?

Mr. SCHWARTZ. Some—

Mr. SCHWENGEL. That being the case, then it is a logical conclusion that the public interest has not then been served as adequately as it could have been. Are you willing to admit that?

Mr. SCHWARTZ. No; I would not say that.

Mr. SCHWENGEL. Even though you are willing to admit that your method of handling things which you have already admitted was a slipshod method?

Mr. SCHWARTZ. Some of them might have been, but, personally, I do not think that the public did not get the proper appraisal and all the work that should have gone with it.

Mr. CONSTANDY. I would like to say both to you, Mr. Collins, and to Mr. Schwartz, the evidence that we have here today suggests that you did not get the data that you reported to the State from the tax

assessor in the city of Attleboro. You may have been there. It raises a serious question of one of two things: Did anyone else offer to either of you, or both of you, a comparable sale which Mr. Almac indicated an area of 48,000 square feet? Mr. Collins?

Mr. COLLINS. No, sir. All the information in my report came from the office of the assessor. It came from no other.

Mr. CONSTANDY. Mr. Schwartz?

Mr. SCHWARTZ. To my knowledge, that is where I got it at that time. This is 2 years ago and I know that we both went in there and we were both looking for comparable sales at that time.

Mr. CONSTANDY. Let me just say this: In answering it in that way, you overlook the fact that the information you reported was not there available at the time you went there.

It is not available there today, and you could not have gotten it there, and if you say you did not get it from someone else, it suggests the second possibility: That you perhaps deliberately reported it falsely; instead of 126,000 square feet, that you reported it 48,000.

Mr. SCHWARTZ. Mr. Counselor, I do not know how those figures came about.

Mr. CONSTANDY. Neither do I, Mr. Schwartz. We have made a diligent effort to find out and the best we can come up with is that under the circumstances that you say you got them, that you could not have gotten them.

Mr. SCHWARTZ. I do not know.

Mr. SCHERER. Gentlemen, isn't perhaps the reason that you were not as well prepared in this particular case is the fact that at the time you made the appraisals you were pretty sure that you would not have to ever testify in court in these cases?

Mr. COLLINS. That was not my feeling at all, sir. I think, Congressman, I felt that I did a conscientious and good job. If there was an error, that was an error which the assessor gave us as to that information.

Mr. SCHERER. I was not talking about errors. I think it is just sort of obvious, after listening to testimony, that in other cases you were better prepared; that you were not prepared in this case; that you felt fairly certain that this was one of those cases that everything was pretty well set, that you would never have to go to court.

In other words, the track was greased. That was the case, was it not?

Mr. COLLINS. No, sir.

Mr. CRAMER. Will the gentleman yield? Did you consider at all in coming to the value—I do not see it anywhere in the report—either you or Mr. Collins, what the property had previously sold for, this property, what Mr. Webb paid for it?

Mr. COLLINS. I knew what he paid for it; yes, sir.

Mr. CRAMER. Why is it not in your report?

Mr. COLLINS. Up until fairly recently, they did not want it incorporated in the report.

Mr. CRAMER. Who did not?

Mr. COLLINS. Sir?

Mr. CRAMER. Who did not?

Mr. COLLINS. The State, as far as I know.

Mr. CRAMER. Then you had knowledge of the fact that Mr. Webb a few years before paid \$20,000 for this property. How in the world can you come to the conclusion that it is now worth \$65,000?

Mr. COLLINS. That is my opinion.

Mr. CRAMER. What happened to the property in those short few years? Nothing was done to it. It was not improved. As a matter of fact, it ran down. What happened to it? Did they discover oil or something?

Mr. COLLINS. No, sir. I felt the value was there.

Mr. CRAMER. How did you get a 300 percent greater value than Webb paid for it?

Mr. COLLINS. The price that a property sells for at one time is not the greatest single determining factor. It is a factor.

Mr. CRAMER. It is a determining factor, right?

Mr. COLLINS. It is a factor.

Mr. CRAMER. And you ignored it. You had to ignore it—

Mr. COLLINS. I did ignore it. I ignored the fact that he had paid only that amount of money. I did not think it was any reflection of the true value at all. I did not know the circumstances, but I understand that it was a forced sale.

Mr. CRAMER. You have answered the question. You ignored the previous sale value.

Now, Mr. Beasley, if he had done a proper appraisal, isn't that one of the basic, fundamental elements that would have to be considered?

Mr. BEASLEY. Yes, sir.

Mr. CRAMER. If it were a proper appraisal?

Mr. BEASLEY. That is correct.

Mr. CRAMER. Is there any question about that?

Mr. BEASLEY. No, sir.

Mr. CRAMER. Should not any member of the American Association of Appraisers know that?

Mr. BEASLEY. Yes, sir.

Mr. CRAMER. Mr. Schwartz, may I ask you the same question. Did you know what Mr. Webb bought the property for, \$20,000, a few years prior?

Mr. SCHWARTZ. I did.

Mr. CRAMER. Did you ignore it, too?

Mr. SCHWARTZ. No, sir.

Mr. CRAMER. How did you take it into consideration if you upped it to \$67,000?

Mr. SCHWARTZ. I felt that this property was purchased by a realty company who bought it as a speculation in order to derive a profit for himself somewhere, and it must have been a distress property when he bought it for that.

Mr. CRAMER. How did you find out that? You could not find out much else. How did you find that out?

Mr. SCHWARTZ. I am assuming that.

Mr. CRAMER. Oh, you are assuming it?

Mr. SCHWARTZ. And this company is a realty company, and most realty companies, when they buy property, they are buying it for a purpose of reselling it at a profit.

Mr. CRAMER. You saw fit, then, to assume everything that would favor a high valuation and ignore everything that would result in a low one; is that not exactly what you did?

MR. SCHWARTZ. No. When I went into this property, I do know what values are as far as a lumberyard is concerned, and we have a large lumberyard in the city of Fall River.

I know what it cost us to construct property. I know what it has cost us to enlarge. When I went into this place, this building had all truss beams. There was not a column in there. Everything was built. It was built and it still is, or if it is there now, I don't know, it was in excellent condition, and, in my opinion, the appraisal that I put down was a fair market value for that property.

MR. CRAMER. In other words, your figure was based upon what it would cost to replace it brandnew, right? That was the major consideration?

MR. SCHWARTZ. The end of it, the last figure is what I figured the property was worth then.

MR. CRAMER. Mr. Beasley, you have examined his report. What do you have to say about that?

MR. BEASLEY. There was nothing in his report to support the fact. It is just one statement of fact: the value, \$30,000.

MR. CRAMER. There is no indication of replacement value?

MR. BEASLEY. No.

MR. CRAMER. No indication of square footage, building value, with anything to back it up; is that right?

MR. BEASLEY. Nothing whatsoever.

MR. CRAMER. What was your estimate of the value?

MR. BEASLEY. I do not have that figure right here before me, but it was in the neighborhood of \$20,000.

MR. CRAMER. \$20,000; value of the property?

MR. BEASLEY. \$27,000 was the taking—was the value before the taking. Pardon me, I have those figures.

MR. MAY. Mr. Beasley, we have already had testified that you valued the improvements at \$21,500 and \$4,900.

MR. BEASLEY. Yes; that is correct.

MR. CRAMER. Mr. Beasley, Mr. Schwartz and Mr. Collins both just testified, at least Mr. Schwartz, that this was an appraisal that was not quite up to standards of what they usually did; is that not correct?

You do better work than this, is that not what you said in answer to Mr. Scherer?

MR. SCHWARTZ. If I recollect, there are some things in this appraisal valuation sheet I should have put in here, which is the depreciation and so forth, so that it would have shown on the report, and if I had had that on there, it would have substantiated a lot of this here. But, coming back again, if I may, this gentleman, Mr. Beasley on my left, I would like to have you ask him a question: In his opinion, what a building of that type would cost today to build a square foot.

MR. CRAMER. All right, I will ask him.

MR. SCHWARTZ. Could you ask him that question?

MR. CRAMER. I will ask him that question. And what is the proper valuation in comparison, using the proper figures, what would be the value of this building and to what extent is replacement value a consideration?

He is using solely how much it is going to cost to replace it. How should that figure be considered in a proper appraisal?

MR. BEASLEY. You would, of course, estimate the replacement new, and then you would take into account the various factors of de-

preciation and arrive at your replacement less depreciation estimate, but that is just one element.

Mr. CRAMER. You would consider the present condition of the building, would you not, after inspection?

Mr. BEASLEY. That is correct. Of course, this is just one small phase of the approach to value. You have the income approach and the comparable sales approach, also.

Mr. CRAMER. I notice that Mr. Collins says that they were getting \$125 a month rent. The fact is they were getting \$75, were they not?

Mr. BEASLEY. That is right.

Mr. CRAMER. So if you start out with a false figure, nearly 100 per cent false, you are going to end up with one false element, are you not?

Mr. BEASLEY. That is correct.

Mr. CRAMER. And you will end up with a false appraisal?

Mr. BEASLEY. That is correct.

Mr. CRAMER. And if you overweight your appraisal with the value of the replacement, not considering these other elements you mentioned, again you are going to get a false appraisal, are you not?

Mr. BEASLEY. That is correct.

Mr. CRAMER. Now, in analyzing the appraisals made by Mr. Schwartz, let us take him first, what is your opinion of his appraisals?

Mr. BEASLEY. I do not consider that they have anything but a statement of fact. They are not an appraisal as prescribed by the standard appraisal practice in the profession, nor as required by the department of public works in their specifications, nor as required by the minimum requirements of the Bureau of Public Roads.

They have a certain composition of general fact that pertains to these properties, but they do not set forth any supporting conclusions, and the facts that we did examine into in reviewing these reports, such as the sales and the other data, did not check out, was not there, and does not in any way support the conclusion which was presented.

Mr. CRAMER. Then it was not a good appraisal, is that your opinion?

Mr. BEASLEY. I do not even think it is an appraisal. I just think it is a statement of fact.

Mr. CRAMER. What would you call it, a boiler plate appraisal? Would that be a good description of it?

Mr. BEASLEY. That is as good as any.

Mr. WENDER. Mr. Chairman, I had understood that Mr. Cramer was going to ask Mr. Beasley to tell us what he would say would be the reproduction cost of that building, less depreciation.

Mr. SCHWARTZ. A square foot. He has not answered it.

Mr. CRAMER. I do not see any objection to his answering the question.

Mr. BEASLEY. I do not have our worksheets here, Congressman, on it. I will be glad to bring it in and go into it.

Mr. CRAMER. You have made calculations on this building, and you considered it part of your appraisal, is that right?

Mr. BEASLEY. That is correct.

Mr. CRAMER. And your conclusion was what total value?

Mr. BEASLEY. We came on the depreciated value with improvements at around \$22,000.

Mr. CRAMER. For both buildings?

Mr BEASLEY. Yes, sir.

Mr. CRAMER. Does that answer your question?

Mr. SCHWARTZ. No, Mr. Congressman.

With the experience and the knowledge that Mr. Beasley has and the years of experience far superior to mine, I personally feel that he can sit down right now, after going through that building the way he has, and that he can give me an approximate amount of the replacement cost per square foot on a building 110 by 63, approximately 20 feet high, with the construction that he knows that is in it, and I think he can do it in 5 seconds.

Mr. CRAMER. Mr. Beasley can bring it in with him tomorrow, I assume, but I would suggest that counsel ask Mr. Beasley that question, in fairness to Mr. Schwartz.

But it is obvious, Mr. Schwartz, that that was the principal consideration you gave to value, and you did not give adequate consideration to other elements. Is that not true, Mr. Beasley?

Mr. BEASLEY. That is the fact.

Mr. CRAMER. All right.

Now, you had an opportunity of investigating other appraisals by Mr. Schwartz, did you not, Mr. Beasley?

Mr. BEASLEY. That is correct.

Mr. CRAMER. Were any of them any better than this one?

Mr. BEASLEY. The same style; exactly the same.

Mr. CRAMER. Boiler plate appraisals?

Mr. BEASLEY. Yes, sir.

Mr. CRAMER. How about Mr. Collins?

Mr. BEASLEY. Same thing.

Mr. CRAMER. Boiler plate appraisals?

Mr. BEASLEY. Yes, sir.

Mr. CRAMER. About how many did you examine of each of them?

Mr. BEASLEY. I reviewed the Charpentier properties, as well as the Damort Land Corp. properties.

Mr. CRAMER. Same thing, boiler plate appraisals.

Mr. BEASLEY. I also reviewed their appraisals on Forest Hills Nursery in Seekonk, Mass.

Mr. CRAMER. How were they?

Mr. BEASLEY. About the same.

Mr. CRAMER. Boiler plate appraisals?

Mr. BEASLEY. Yes, sir.

Mr. COOK. Mr. Chairman, I was going to suggest that maybe there have been too many appraisals made in 5 minutes or less.

Mr. FALLON. Some of the members of the committee have been asking just what arrangements we are going to make for the rest of the day.

We are pretty nearly through with the witnesses before us at the present time. Counsel would like to have Mr. Lawton and Mr. Hopkins back this afternoon, so when we finish with the witnesses here, we will recess until 2 o'clock, at which time we—

Mr. MAY. Mr. Chairman, we would also want available this afternoon Mr. James S. O'Connell, Mr. Frank L. Harney, Mr. Lester Ellis, and Mr. Anthony Di Natale.

Mr. CRAMER. You realize, of course, the testimony you are giving in this hearing is under oath, do you not?

Mr. SCHWARTZ. Yes, Mr. Congressman.

Mr. CRAMER. And both of you, Mr. Collins and Mr. Schwartz, have been advised by your counsel, I presume, with regard to the laws concerning perjury, have you not?

Mr. SCHWARTZ. We have.

Mr. CRAMER. You have. Have you, Mr. Collins?

Mr. COLLINS. Yes, sir.

Mr. CRAMER. Did you at any time receive anything of value, directly or indirectly, in excess of the amount of money that the records show you were paid for these appraisals by anyone?

Mr. SCHWARTZ. Definitely not, emphatically no.

Mr. CRAMER. Mr. Collins?

Mr. COLLINS. No, sir, not in these instances or in any other.

Mr. CRAMER. Did you receive any promises of further——

Mr. COLLINS. No, sir.

Mr. CRAMER. Just a minute.

Did you receive any promises, Mr. Collins, of further employment, or of anything of value whatsoever?

Mr. COLLINS. No, sir.

Mr. CRAMER. In the future?

Mr. COLLINS. No, sir.

Mr. CRAMER. For having turned in this obviously fraudulent appraisal?

Mr. COLLINS. No, sir.

Mr. CRAMER. Mr. Schwartz?

Mr. SCHWARTZ. Mr. Congressman, the answer is still "No." At no time.

Mr. CRAMER. Well, you came at a pretty low price then for being a party to increasing the value of this property from \$20,000 to \$60,000, did you not?

If somebody got something out of it, you did not get your share, did you?

Mr. SCHWARTZ. I do not like that insinuation about my share. I received nothing, Mr. Congressman.

Mr. CRAMER. That is all, Mr. Chairman.

Mr. GRAY. Mr. Chairman, is it the intention of the Chair to call Mr. Schwartz back this afternoon? I would like to ask him one question, if I may.

Mr. FALLON. Mr. Gray?

Mr. GRAY. Mr. Schwartz, are you acquainted with a gentleman by the name of Hopkins, who was a departmental appraiser?

Mr. SCHWARTZ. I answered that question for the grand jury in Boston, and I did not know a Mr. Hopkins. But since answering that question, when I met Mr. Hopkins at the hearing, at the hearing of a trial, I then recollected who Mr. Hopkins was, and I had met Mr. Hopkins in Boston at one time or another.

Mr. GRAY. If you did not talk to Mr. Hopkins concerning this Damort property——

Mr. SCHWARTZ. Definitely not. I never even knew he was on the appraisal, sir.

Mr. GRAY. Do you know now he did make an appraisal of that property?

Mr. SCHWARTZ. I have just heard so since I have been here.

Mr. GRAY. In your appraisal of \$67,000, it was not predicated at all upon his appraisal prior to yours of the property?

Mr. SCHWARTZ. No, Mr. Congressman.

Mr. GRAY. Mr. Collins, I will ask you the same questions. Are you acquainted with Mr. Hopkins?

Mr. COLLINS. I am now. I was not acquainted with him at all until July or August sometime of last summer.

Mr. GRAY. In arriving at your appraisal figure, you did not consult him on this property?

Mr. COLLINS. No, sir.

Mr. GRAY. That is all.

Mr. FALLON. Are there any other questions by the members?

Mr. WENDER. Mr. Chairman, before we adjourn, may I ask may Mr. Schwartz go back home?

Mr. FALLON. Counsel is not yet ready to dismiss the witness.

Mr. CONSTANDY. We have had testimony that relates to the sale reported by both Mr. Collins and Mr. Schwartz as Whitman's Diner, Inc., to Almac.

Did you inquire further into any of the other comparable sales reported by them, Mr. Beasley, particularly Old Colony Advertising, the First National Stores?

Mr. BEASLEY. Yes, sir. The facts as contained in that summarization are incorrect.

Mr. CONSTANDY. They reported, as I understand it, 45,367 square feet, and there actually was 40,367 feet?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. There is an error of 5,000 square feet. On the sale of William Walsh to First National Stores, used by both of them, was that reported accurately?

Mr. BEASLEY. No, sir; it was not.

Mr. CONSTANDY. Was it a minor error, or was it a substantial error?

Mr. BEASLEY. Mr. Schwartz states that the sale involved 13,188 square feet of land, and I have the plat of record here, as well as the deed, and it indicates 18,188 square feet, not 13,188, a difference of 5,000 square feet, which can be a substantial difference in unit price per square foot when the total square foot area is divided into the purchase price.

Mr. CONSTANDY. In his appraisal, Mr. Schwartz uses \$1.10. If you take his own figures, it would come out to \$1.06. But actually using the correct figure of 18,188 square feet, it figures out to not \$1.10, but 77 cents. That does not seem like much either until you realize that 33 cents, extended to an acre, is \$14,374. We are talking about substantial differences.

Mr. SCHWARTZ. Mr. Counsel, I can repeat what I said before: That these figures were given to me and they were read to me, and in my taking these down I might have made a mistake. But if I did, it was definitely unintentional error.

Mr. CONSTANDY. Let me go back, Mr. Schwartz, to Almac, Whitman to Almac.

There is no combination of figures available in the city tax collector's office or assessor's office which would have enabled you to make an error of from 48,000, to what it properly should have been, 126,000.

I gave you those figures. If you can figure out some combination, a part of them or some combination of the parts, and come out with 48,000, I would like to know it.

Mr. SCHWARTZ. I cannot, and I do not recollect any more than the figures that I have down here, and those are the figures that I went by.

Mr. CONSTANDY. Did Mr. Collins use the same sales and the same errors, Mr. Beasley?

Mr. BEASLEY. Yes, sir.

Mr. CONSTANDY. When you reviewed Mr. Schwartz's appraisal, the one that he submitted to the department of public works, did you notice any similarity between the tabulation of figures in his appraisal report and the tabulation of values in the department of public works' own appraisal report?

Mr. BEASLEY. The chronological sequence of listing the property improvements for value purposes on the DPW form appraisal and those of Mr. Schwartz are following the same sequence, and the values are minor adjustments in most instances, one way or another, but the same sequence of facts, the same identification, right down the line is the same.

Mr. CONSTANDY. Mr. Schwartz, did you ever have access to the Damort land taking of the State's departmental appraisal?

Mr. SCHWARTZ. No, sir.

Mr. CONSTANDY. Did you, Mr. Collins?

Mr. COLLINS. No, sir; I did not.

Mr. CONSTANDY. Mr. Schwartz, have you ever seen the appraisal of the department of public works on any property?

Mr. SCHWARTZ. No, sir.

Mr. CONSTANDY. Mr. Collins?

Mr. COLLINS. I never have.

Mr. CONSTANDY. Mr. Beasley, is it not normally expected that an appraiser performing the appraisal process will follow through each of the three approaches to value in making his appraisal, correlate them at the end, and come out with his findings?

Mr. BEASLEY. Yes, sir.

Mr. CONSTANDY. Did Mr. Schwartz use all three approaches?

Mr. BEASLEY. No, sir.

Mr. CONSTANDY. And they, of course, would be used when applicable?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. Not necessarily in every case?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. Would more than one approach have been applicable in the subject case?

Mr. BEASLEY. The three approaches were quite available for use in this particular case.

Mr. CONSTANDY. Mr. Schwartz used simply one?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. Is that true, too, of Mr. Collins?

Mr. BEASLEY. That is correct.

Mr. CONSTANDY. Mr. Schwartz, Mr. Collins has testified that there came a time after the completion of your appraisal in the Damort property and others in Attleboro that he received a telephone conversation from you in which you requested him to make a complaint to the department of public works that the fee of \$2,050 was inadequate for the eight appraisals in Attleboro, and you have made such a complaint to Mr. Dole and you asked that he make a complaint similarly so that you could be paid \$2,500, is that correct, Mr. Schwartz?

Mr. SCHWARTZ. I called and made a complaint in reference to that. The answer is "Yes." What the conversation I had with Mr. Collins was, I do not remember, but after reviewing the property and going over some of the——

Mr. CONSTANDY. Will you just confine your answer to the question? We may get to some of the rest of it.

Mr. SCHWARTZ. The answer is "Yes."

Mr. CONSTANDY. To whom did you speak in the department of public works?

Mr. SCHWARTZ. Mr. Dole.

Mr. CONSTANDY. Did you tell him that you felt that the work you had done was worth more than \$2,050?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Did you honestly feel that?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. And you subsequently had the conversation with Mr. Collins, is that correct?

Mr. SCHWARTZ. Correct.

Mr. CONSTANDY. And, as a result, each of you were paid, not \$2,050, but \$2,500?

Mr. SCHWARTZ. I know what I was paid.

Mr. CONSTANDY. \$2,500?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Mr. Collins?

Mr. COLLINS. That is right.

Mr. CONSTANDY. Was there one particular property that made you feel you were entitled to more payment, Mr. Schwartz?

Mr. SCHWARTZ. I do not remember at the minute, but I do know that the whole eight appraisals there, that consisted, they were worth more than the figure that was given to me, in my estimation.

Mr. CONSTANDY. Just one thing further, Mr. Schwartz.

When you made up your appraisal report, at least the data would be incorporated in it in Fall River, is that correct? You were doing it in your office or at home, is that correct?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Was it necessary with some of the appraisals that they be sent to someone else to type them?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. Without mentioning the name of the person, since he is purely a public stenographer, was the appraisal sent to a public stenographer in Boston?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. How did they get from Fall River to Boston?

Mr. SCHWARTZ. Most of the time they were taken there by my son, whom I have since learned today or yesterday, when I have been talking to him, that some of them were put in an envelope when he went in to see my brother-in-law, that some of them were delivered by him because of the lack of ability to park over there, and other times he might take one of my brother-in-law's partners who might sit in the car and he would drive over there and he took them up himself.

Mr. CONSTANDY. So I understand this correctly, some of the appraisals you were making on behalf of the department of public works were transmitted through your son to Mr. Jacobs, your brother-in-law?

Mr. SCHWARTZ. I just found that out.

Mr. CONSTANDY. It is correct, though?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. There came a time when Mr. Jacobs had in his possession appraisals made by you for the department of public works; is that correct?

Mr. SCHWARTZ. Correct.

Mr. CONSTANDY. And were there other times when you, yourself, directly gave appraisals to Mr. Jacobs in order that he would take them to Boston to the public stenographer?

Mr. SCHWARTZ. That I do not recollect. Most of the time my son took them up, or I might have mailed them up. I do not remember. And I took them up at times.

Mr. CONSTANDY. Mr. Jacobs visited you two or three times a week in Fall River, did he not?

Mr. SCHWARTZ. Yes. There was one time where I put some of this work in an envelope and sealed it up with a name on it, and I asked him if he would be good enough to deliver it for me.

Mr. CONSTANDY. You were very careful to see that it was sealed?

Mr. SCHWARTZ. It was sealed.

Mr. CONSTANDY. And this is consistent with the instructions given to you by the department of public works: That the final figure by you be kept confidential?

Mr. SCHWARTZ. Yes.

Mr. CONSTANDY. You testified yesterday that at the time you did not know your brother-in-law was the appraiser for the property owner, and you subsequently learned that he was on some, is that correct?

Mr. SCHWARTZ. That is correct.

Mr. CONSTANDY. And some of those for whom he appraised on behalf of the property owner were the same parcels to which you were assigned as the appraiser for the department of public works.

Mr. SCHWARTZ. That is correct.

Mr. CONSTANDY. I would like to point out, Mr. Chairman, that, although it was to be kept confidential, there were times when Mr. Schwartz was assigned as an appraiser to the department of public works, and his confidential appraisal report, thereafter, was in the hands of Mr. Jacobs, who, on occasion, was an appraiser in behalf of the property owner. I have no further questions.

Mr. FALLON. Any further questions by members of the committee?

Mr. CRAMER. I just have one of Mr. Beasley, Mr. Chairman. This pattern that is beginning to develop, as I see it, in this conspiracy, which, to succeed, has to be based upon fraudulent appraisals, is it not true, or would you give your analysis of how this conspiracy operates, the importance of the appraisals in it?

These appraisals start out at the very beginning of the consideration by the State, is that not right, the very first time they take a look at value other than line appraisals?

Mr. BEASLEY. That is the pattern that has developed, yes, sir.

Mr. CRAMER. And that appraisal, those appraisals, fee appraisers, their figures then go to the review board. That is what the review board has to review, is it not?

Mr. BEASLEY. This is what they use as a basis for their determination of a value which is handed to the negotiating department for final negotiation with the property owner. He either accepts it or there is

a negotiation or from there it goes on to the attorney general's office.

Mr. CRAMER. Using the same appraiser?

Mr. BEASLEY. The same appraisal.

Mr. CRAMER. And the attorney general's office, when he gets it, has the same information, right?

Mr. BEASLEY. Has the same information transmitted to him, to my knowledge.

Mr. CRAMER. So from beginning to end, if these appraisals are false and fraudulent, then the settlement that is made, talking now about settlement out of court, those settlements would be false and fraudulent, too, would they not? They would be in excess of true value?

Mr. BEASLEY. That is correct.

Mr. CRAMER. And the pattern that has developed in Massachusetts, how many areas did you examine in Massachusetts?

Mr. BEASLEY. Six or seven areas, all told. I made special studies in about five, I guess.

Mr. CRAMER. What are those areas?

Mr. BEASLEY. Seekonk, Attleboro, Worcester, Lowell, Peabody.

Mr. CRAMER. How many of those did you make specific analyses of what you thought was correct value and what was paid?

Mr. BEASLEY. As far as my personally establishing a value is concerned, after this Attleboro-Seekonk work, the direction of our assignment by the Bureau of Public Roads was changed and we were assigned the job of specific reviews. When I say "specific reviews," I mean that the entire record, as secured by the Bureau of Public Roads, was from the department of public works, was turned over to us, and our assignment became one of examining into the documentary evidence or documentary data contained in reports to substantiate value as reported in the department of public works appraisals and in the fee appraisal reports.

These studies, we called them case studies, were prepared in written form. I believe you have copies of some of them. And they were submitted to the U.S. Bureau of Public Roads.

Mr. CRAMER. And among those studies was concerning the witnesses presently testifying on that particular property?

Mr. BEASLEY. The Damort Land Corp. was one of the properties reviewed; yes.

Mr. CRAMER. That is all I have.

Mr. COOK. One question, please, Mr. Chairman.

Mr. Beasley, would you please give me your opinion as to whether expert testimony of this type, based upon appraisals of this type, would be a help or a handicap to the legal office—I believe in this case the attorney general's office in Massachusetts—in the prosecution or in the preparation of cases of a land-taking nature such as these?

Mr. BEASLEY. I do not see how these gentlemen could bear cross-examination. Of course, you run into this particular problem. The property owner, if he is in court, is there to get as much as he can.

So we start at a level where these values are pegged, and if there is a dispute, from there it goes up, because the property owner is certainly not going to go down in his application of value, meaning his pursuit of just compensation as he considers it. It is a very complex problem to answer, to look into, because you do have negotiations apparently going forward in cases.

This is the first case, if I might observe—this is 1959 work that we are discussing here, and the facts, as we will continue and as we work here, will be quite interesting, I am sure.

And you will find that there is a problem concerning where it all begins and how far from this beginning can you go forward and upward.

Mr. COOK. These witnesses that make these appraisals are the State's only witnesses, more or less, with reference to what the State's position must be in trying to defend these suits or present the State's views as to the values of the land being taken; is that not correct?

Mr. BEASLEY. That is absolutely correct.

Mr. COOK. From that point of view, is not the State handicapped by not having witnesses who can back up their evaluation of a particular piece of property better than the two witnesses before us today?

Mr. BEASLEY. I would like to observe that I believe that where the question would come to a court trial, that the attorney would have the right, if he felt that he did not have an adequate report, to ask for additional reports before he went to trial, and I would assume that that privilege is accorded to the assistant attorney generals of the State of Massachusetts.

Mr. COOK. The review board that would have to consider this problem of setting a fair value on the property would be dependent upon these fee appraisers, as well as the department's appraiser.

In your opinion, based upon the appraisal of this property, would they be handicapped in reaching a fair evaluation, what eventually is proven to be a fair evaluation, on the basis of these reports? I understand that they, too, have the right.

Mr. BEASLEY. Yes.

Mr. COOK (continuing). To ask for a second or third appraisal, but if they were based upon the department's appraisal and the two fee appraisers, they would be handicapped in this instance, would they not, in arriving at a fair price?

Mr. BEASLEY. The handicap arises as a result of the lack of information contained within these reports.

Mr. COOK. Yes.

Mr. BEASLEY. I would say that when you are handed a document containing six or seven pages, on one page there is a terse statement, five lines, of value that totals \$60,000 or \$65,000, and you have five or six sales, and they weight to \$1 to \$1.25, or down to 60 cents or 70 cents a square foot, there is nothing else; the quick review, even by a learned person, experienced in this, without any supporting data from which he can relate this information, would come to the conclusion, fair value; and it is only as a result of the analysis that has gone forward in our work for the Bureau that the documentation which was presumed to be there has been found not to be there.

As a matter of fact, as I say, this is only just No. 1 in the beginning, and, as time passes, you will see some most interesting information.

Mr. COOK. This same problem, however, would cut the legs out from under the attorney general's case in a court, too, would it not, if he relied upon these sources of information only?

Mr. BEASLEY. I would say that he will have to answer his own questions.

Mr. FALLON. Mr. Scherer?

Mr. SCHERER. Mr. Beasley, you have testified that you have reviewed appraisals and prices paid for various parcels of real estate in these different communities in Massachusetts. You found not all of the appraisals and not all of the prices paid excessive, according to your standards, did you?

Mr. BEASLEY. That is correct.

Mr. SCHERER. But you did find a considerable number of them where the appraisals were excessive and where the appraisals were not scientifically made. You also found a number of them where the prices paid by the State was excessive, is that right?

Mr. BEASLEY. Yes, sir. That came about as a result of the analysis of the various cases.

In other words, we would take projects and review the whole project, and in certain cases, without relation to name or individual, it would stand up—the graph which I illustrated yesterday—

Mr. SCHERER. I was not here but I did see that graph. My question was that in those instances where you found excessive appraisals or excessive prices paid, did you find the same attorneys and the same appraisers were involved?

Mr. BEASLEY. Yes, sir.

It involves, the whole thing has to involve a combination of, or sequence of, events, in order for it to take place, as we see it.

I would like to say, however, that my analysis has been confined to the study of the real property matters, and the Project Examination Division of the Bureau of Public Roads, taking this data, has then gone beyond to interrogate the individuals and to determine the circumstances surrounding these matters. So I have just one phase of the total program that has gone forward on this work.

Mr. SCHERER. But when you did review those cases in which you found the prices paid to be excessive, when you reviewed them as to who participated in the settlement of those particular cases, you did find that the same, or relatively the same, individuals were involved?

Mr. BEASLEY. Yes, sir. There is apparently, there exists a small corps or group of people who have the knowledge to follow a pattern of establishing a record and progressing with this record to the conclusion of settlement. It appears to be that way.

Mr. SCHERER. I have no questions.

Mr. CONSTANDY. Mr. Chairman, I would like to offer as exhibit No. 15 these appraisals of Mr. Collins, Mr. Schwartz, and Mr. Lawton.

Exhibit 16 is a city of Attleboro tax assessor's card and certified copy of deed in Taunton regarding the property from Bellegris to Almac.

Mr. FALLON. If there is no objection, it is so ordered.

(The documents referred to were marked "Exhibit No. 15" and will be found in the files of the committee.)

(The documents referred to were marked "Exhibit No. 16" and will be found in the files of the committee.)

Mr. FALLON. The witnesses are excused, and the committee will recess until 2 o'clock.

(Whereupon, at 12:35 p.m., the hearing was adjourned, to reconvene at 2 p.m., of the same day.)

AFTERNOON SESSION

Present: Representative Fallon (presiding), Baldwin, Bass, Cook, Cramer, Gray, Johnson, Jones, Kluczynski, McVey, Robison, Scherer, Schwengel and Wright.

Mr. FALLON. Mr. Charles H. Lawton.

Ladies and gentlemen, the special subcommittee of the Public Works Committee is resuming sessions on the so-called Massachusetts hearings.

Mr. LAWTON, I understand that you have already been sworn.

Mr. LAWTON. Yes, sir.

Mr. FALLON. Mr. May.

Mr. MAY. Mr. Lawton, with respect to your testimony yesterday, there was one point that was not clear to me.

TESTIMONY OF CHARLES H. LAWTON, ACCOMPANIED BY HAROLD M. COLE, COUNSEL—Resumed

Mr. LAWTON. Yes.

Mr. MAY. We spoke of Mr. Harney calling you on the telephone, perhaps in late December or early January 1960.

Mr. LAWTON. Yes.

Mr. MAY. We also mentioned that Mr. Harney telephoned you again later in January?

Mr. LAWTON. Yes, sir.

Mr. MAY. With respect to that second telephone call, Mr. Lawton, could you explain in more detail what took place in that conversation?

Mr. LAWTON. He asked me if I would be able to appraise two properties, and I asked him which they were, and he said the Damort Land Co. and the Charpentier Land Co., or, rather, the Charpentier property in South Attleboro; and at that time he gave me a price range of properties that had been appraised previously, and Mr. Harney was—I had no reason to believe was anything but a correct negotiator for the State, and I assumed everything to be in normal procedure.

Mr. MAY. Mr. Harney was speaking of the Damort property?

Mr. LAWTON. Yes.

Mr. MAY. Did he not tell you that three appraisals had been previously made on the property?

Mr. LAWTON. Yes, sir.

Mr. MAY. In the range of \$55,000 to \$67,000?

Mr. LAWTON. That is correct.

Mr. MAY. Did Mr. Harney suggest to you that another appraisal was needed?

Mr. LAWTON. Yes, sir. He said—

Mr. MAY. Within that range, Mr. Lawton?

Mr. LAWTON. He said a fourth appraisal was needed, and did I think that was a reasonable range.

Mr. MAY. What did you say?

Mr. LAWTON. I told him that I had never been on the property physically. I knew of its location, but I had never inspected it carefully and I couldn't make any statement because I had no knowledge of it until I appraised it. I would have to appraise it first.

Mr. MAY. Did you tell Mr. Harney that that range seemed reasonable?

Mr. LAWTON. I told him it might be a reasonable range, but I would appraise the property, and I couldn't tell him until I appraised it, naturally. It sounded feasible.

Mr. MAY. Thank you very much, Mr. Lawton.

Mr. FALLON. Mr. Baldwin.

Mr. BALDWIN. Mr. Lawton, the testimony which was given in the last couple of days showed that your firm had been retained by the owner, Mr. Webb, to handle this property for sale, and the testimony of Mr. Myette was that as soon as the property actually was sold, that he phoned Mr. Webb to speed up the payment of the commission on the sale figured at 5 percent on \$30,000, which Mr. Webb had earlier written you that he was going to pay a commission on. This would indicate your firm was clearly the agent for the owner of the property throughout this period. That means, therefore, that when you were contacted to be employed by the State as a fee appraiser, that you simultaneously were the agent of the landowner. You must have been aware of that fact, were you not?

Mr. LAWTON. No. Mr. Webb wrote a letter to us and Mr. O'Connell in the previous September relieving us of all work to be done on the property. He said he was taking over all negotiations, and we were to have nothing further to do with him, and he had all negotiations from that point on with Mr. O'Connell.

Mr. BALDWIN. Well, he may have made that statement, but nevertheless he also wrote to you and said he was going to compute your fee on the basis of 5 percent of \$30,000, and Mr. Myette, your partner, phoned him as soon as the sale was consummated to urge him to expedite the payment of your fee of 5 percent on \$30,000. That shows clearly your partner at all times considered you were in an agency relationship with the landowner, and you are in the same relationship as your partner, and the two of you split the fee paid to you by the owner of the property. Therefore, it seems to me when you were contacted to be employed as a fee appraiser by the State that there was a definite, clear conflict of interests, and you knowingly, knowing that that conflict of interest existed, accepted the employment of the State as a fee appraiser.

Mr. LAWTON. No, sir. Mr. Myette was not a partner. He was a salesman with desk space in the office. He had been the one that had been handling the property from the very beginning. My contact with it had always been at arm's length.

Mr. BALDWIN. But you shared in the fee that was received from the owner of the property, Mr. Webb, which shows clearly that you personally, the head of the firm, were an agent for the property owner throughout the whole period, including the period when you were employed by the State as a fee appraiser.

Mr. LAWTON. We didn't consider it that way. We didn't sell the property and could not receive a commission for something which we in no way sold. I think Mr. Myette testified, although I didn't hear him, of course, that during the years he had put in a great deal of time to protect this property from vandalism and had inspected it weekly, and sometimes in the evening to see that no harm came to it; and it was in appreciation of this work, and also of advice he had given to

Mr. Webb during the years, that he would be paid for services rendered, and not for a commission on the property.

If it was so stated it was a misnomer, and it was not for commission work, because to receive a commission you must sell the property and we did not sell the property.

Mr. BALDWIN. Nevertheless, your payment was contingent on the sale of the property. It was not paid to you before then. Therefore, the facts seem clearly to show that your fee was contingent upon the sale of the property and only became payable when the property was sold. Therefore, the facts of the matter show you were clearly in a relationship of agent for the sale and therefore had a clear conflict of interest when you were employed by the State as a fee appraiser.

Mr. LAWTON. I would not consider it that way. As an appraiser I am considering it as an individual and not as a member of the firm.

Mr. SCHERER. That is the first time I have heard that.

Mr. JOHNSON. Mr. Chairman.

Mr. SCHERER. Go ahead.

Mr. FALLON. Mr. Johnson.

Mr. JOHNSON. Mr. Lawton, didn't your firm rent this property? Didn't you have the rental of this property and didn't you receive a fee for the renting of this property?

Mr. LAWTON. The fee was for the collection of rent. We didn't try to rent the property. Mr. Goggins came in and solicited it and Mr. Myette performed that service, and he intervened in between Mr. Goggins and Mr. Webb, and we merely collected the rent and remitted it each month.

Mr. JOHNSON. As I recall the testimony, I think your firm received a commission for the rental of this property. Is that correct?

Mr. LAWTON. I think that they received \$7.50 a month.

Mr. JOHNSON. But you did receive a fee for renting?

Mr. LAWTON. For renting. Yes, sir.

Mr. JOHNSON. Thank you.

Mr. MAY. Mr. Beasley, I don't want to go into Mr. Lawton's appraisal in as much detail as we have done with the other appraisals because of the lack of time but could you sum up for the subcommittee your critique of Mr. Lawton's appraisal of the Damort property?

Mr. BEASLEY. Well, Mr. Lawton's appraisal, as we analyze it, was a report containing about six or eight pages of information, and on one page of the total composition there are two sets of mathematics pertaining to the value. First is a cost approach, which is a statement of fact and depreciated value of improvements summarized to make a total of \$59,671. Then he presents an income approach to value and he reports a gross income from the property of \$7,200 a year from which he deducts taxes, insurance, and depreciation and miscellaneous expenses and repairs, developing a net income of \$4,920.20. This he capitalizes at 8 percent to arrive at a value of \$61,500.

The process of capitalization, as presented by him in this report is not consistent with the standard appraisal practice of capitalization of income.

Mr. MAY. Why is it not?

Mr. BEASLEY. Well, in the first place, he carries into his expenses depreciation which actually goes to make up a part of his capitaliza-

tion rate under ordinary circumstances. He reserves no moneys for incomes against land before setting up the capitalization rate, which should have been in the neighborhood of 12 to 14 percent for a facility of this type, and if those rates had been properly computed and had been applied, the value would have been considerably different here.

Mr. MAY. What capitalization rate did Mr. Lawton use?

Mr. BEASLEY. Eight percent.

Mr. MAY. And what would that indicate?

Mr. BEASLEY. Well, it indicates a gilt-edged investment if it had been properly computed.

Mr. MAY. Was this a gilt-edged investment?

Mr. BEASLEY. No, sir.

Mr. MAY. As a result of your work in this area, Mr. Beasley, what did you consider the fair rental to be?

Mr. BEASLEY. Around \$35 a month.

Mr. MAY. Thank you. Mr. Lawton, you have already testified that you yourself would admit that the \$60,000 figure was liberal. You also would admit that you were influenced by the fact that you learned from Mr. Harney that the other experts for the State had appraised this property in the range of \$55,000 to \$67,000. I have no further questions of Mr. Lawton, Mr. Chairman.

Mr. FALLON. You may be excused, Mr. Lawton. Mr. Errol Hopkins. Mr. Hopkins, would you raise your right hand, please?

Mr. Hopkins, do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOPKINS. I do.

Mr. FALLON. Would you give the reporter your full name, please?

TESTIMONY OF ERROL G. HOPKINS, NEGOTIATOR, COMMONWEALTH OF MASSACHUSETTS

Mr. HOPKINS. Errol G. Hopkins.

Mr. FALLON. Mr. May.

Mr. MAY. Mr. Constandy will question the witness, Mr. Chairman.

Mr. CONSTANDY. Mr. Hopkins, how are you employed?

Mr. HOPKINS. By the Commonwealth of Massachusetts as a negotiator.

Mr. CONSTANDY. In what department?

Mr. HOPKINS. The right-of-way division.

Mr. CONSTANDY. You are a negotiator in the right-of-way division for the department of public works. Is that correct?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. You are a permanent employee?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. What kind of an employee are you?

Mr. HOPKINS. A temporary.

Mr. CONSTANDY. For how long have you been a temporary employee?

Mr. HOPKINS. Eight years.

Mr. CONSTANDY. You have been a temporary employee for 8 years. Is there a term to each employment period?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. How long is that?

Mr. HOPKINS. Six months.

Mr. CONSTANDY. From one 6-month period to the next then you are not sure whether you will continue to be employed by the department of public works. Is that correct?

Mr. HOPKINS. That is true.

Mr. CONSTANDY. And that has been true during the period you worked there. Is that correct?

Mr. HOPKINS. I beg your pardon?

Mr. CONSTANDY. That has been true during the period you have worked there?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Before you came to the department of public works can you tell us what experience you had had?

Mr. HOPKINS. With respect to real estate?

Mr. CONSTANDY. Well, correct me if I am wrong, but I have asked for your past occupational experience. You have been a lineman for the New England Telephone & Telegraph Co. for 3 years. You were an operator and maintenance man for a theater for 24 years and were thereafter an employee of a real estate brokerage firm for 3 years.

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. During the period that you worked for the real estate firm, what were your duties?

Mr. HOPKINS. Selling, listing, leasing.

Mr. CONSTANDY. Normal sales?

Mr. HOPKINS. And financing. Normal real estate work.

Mr. CONSTANDY. Did you have any appraisal experience during that period?

Mr. HOPKINS. No actual real estate experience.

Mr. CONSTANDY. Subsequent to that job and prior to becoming employed by the department of public works did you have any additional real estate experience?

Mr. HOPKINS. During the time I worked as a moving picture operator I owned and sold real estate.

Mr. CONSTANDY. Prior to going with the department of public works, however, you had no experience in appraisal. Is that correct?

Mr. HOPKINS. Not actual appraising.

Mr. CONSTANDY. Did there come a time when you were employed by the department of public works when you began to do appraising?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. When was that?

Mr. HOPKINS. About 1955. That might not be a correct date.

Mr. CONSTANDY. I have 1956. Is that correct?

Mr. HOPKINS. It could be.

Mr. CONSTANDY. How did you begin? Were you initially assigned some work to do, or did you begin by working with someone else?

Mr. HOPKINS. I was initially assigned some appraising to do.

Mr. CONSTANDY. Right off the bat?

Mr. HOPKINS. Are you talking about 1956 or when I went to start—

Mr. CONSTANDY. What I want to know is, when you began to work in the general field of appraising in the department of public works.

Mr. HOPKINS. I worked for the department for over a year before I started in the appraisal.

Mr. CONSTANDY. What did you do during that period?

Mr. HOPKINS. For the most part I was measuring, sketching buildings, building segregated cost—

Mr. CONSTANDY. That had only to do with preliminary work?

Mr. HOPKINS. Yes.

Mr. CONSTANDY. And there came a time when you began to be more active in the actual work of appraisal. Is that correct?

Mr. HOPKINS. Yes. That is correct.

Mr. CONSTANDY. Was that 1956?

Mr. HOPKINS. I would say so.

Mr. CONSTANDY. At that time, when you began in 1956, were you initially assigned work that you commenced on your own or did you begin by assisting someone else?

Mr. HOPKINS. I was assigned work on my own.

Mr. CONSTANDY. Had you been assigned to attend any training school or training courses?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. What basis was there for you then to begin your appraisals?

Mr. HOPKINS. I don't quite understand you.

Mr. CONSTANDY. How did you gain the experience to enable you to begin doing appraisals in 1956?

Mr. HOPKINS. I started in the city of Revere, and these appraisals were reviewed by a review appraiser.

Mr. CONSTANDY. I'm sorry. I didn't hear what you said at first. You started where?

Mr. HOPKINS. In the city of Revere.

Mr. CONSTANDY. And you began doing appraisals there?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. Prior to doing that had you attended any courses in any schools?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. What type of property did you begin with?

Mr. HOPKINS. Residential—singles and two-family houses.

Mr. CONSTANDY. Did you continue doing that work for a period?

Mr. HOPKINS. For some time. Yes.

Mr. CONSTANDY. There came a time when you were assigned certain parcels in Attleboro. Is that correct?

Mr. HOPKINS. That was a long time after that.

Mr. CONSTANDY. Our information is to the effect that from August 3, 1959, until November 6, 1959, you had been assigned to Lynnfield, Mass., and that from November 9, 1959, until February 19, 1960, you were then assigned to Attleboro?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. And while there you had certain appraisals that you did? Just prior to the time you went to Attleboro was your experience limited only to the appraisals of residential properties?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. What other types of properties did you appraise?

Mr. HOPKINS. Commercial type properties.

Mr. CONSTANDY. Could you describe them, generally?

Mr. HOPKINS. Gasoline stations, diners.

Mr. CONSTANDY. Any industrial properties?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. You had never done an industrial appraisal prior to going to Attleboro?

Mr. HOPKINS. With the exception of one.

Mr. CONSTANDY. What was that?

Mr. HOPKINS. In the city of Worcester.

Mr. CONSTANDY. What type of building was it?

Mr. HOPKINS. It was a truck garage, as I recall it.

Mr. CONSTANDY. According to our information you spent a total of 3 months in Attleboro from November 9, 1959, to February 19, 1960, and upon completion of that 3-month period you were then re-assigned back to Lynnfield. Is that correct?

Mr. HOPKINS. I don't think so.

Mr. CONSTANDY. In what way is it in error?

Mr. HOPKINS. I was in the Lynnfield—this is the Lynnfield-Peabody area you have reference to when you speak of Lynnfield.

Mr. CONSTANDY. All right.

Mr. HOPKINS. These appraisals for the most part were in the city of Peabody and not Lynnfield.

Mr. CONSTANDY. Well, then it is correct for the period you were in Attleboro?

Mr. HOPKINS. That seems to be—they are correct. After I left Attleboro I'm trying to think where I went.

Mr. CONSTANDY. Did you leave Attleboro about February 19, 1960.

Mr. HOPKINS. I went to the town of Stoneham and Reading.

Mr. CONSTANDY. When?

Mr. HOPKINS. After I left Attleboro.

Mr. CONSTANDY. Would that have been around February 19, 1960?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. So you were in Attleboro for only 2 months?

Mr. HOPKINS. About that time. Yes.

Mr. CONSTANDY. While you were in Attleboro you had certain parcels to appraise. I will read them and you correct me if I am wrong.

The Damort Land Corp., the Louise Charpentier property, Logan, H. & B., Fortier, Burke, and Jencks Adams. Is that correct?

Mr. HOPKINS. No. There were others.

Mr. CONSTANDY. I beg your pardon?

Mr. HOPKINS. There were others.

Mr. CONSTANDY. What others were there?

Mr. HOPKINS. There was a Shaw realty I remember. There were nine in all.

Mr. CONSTANDY. Nine?

Mr. HOPKINS. I believe there were two Burke properties.

Mr. CONSTANDY. Pardon?

Mr. HOPKINS. I believe there were two Burke properties.

Mr. CONSTANDY. There were two Burke properties?

Mr. HOPKINS. Yes.

Mr. CONSTANDY. At the time you went to Attleboro was there another appraiser assigned to work in Attleboro by the department of public works?

Mr. HOPKINS. I believe there was.

Mr. CONSTANDY. Was his name John A. Svirsky?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Was he there before you got there?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Was he there after you left?

Mr. HOPKINS. I'm not sure, but I believe so.

Mr. CONSTANDY. Do you know approximately how many appraisals there were to do in the Attleboro area? In total?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Considering the properties that were there on that layout or along that line, were not the properties that you did the heavier properties, those properties worth more, the industrial properties?

Mr. HOPKINS. I would say so.

Mr. CONSTANDY. Are you familiar with Mr. Svirsky's experience and ability as an appraiser?

Mr. HOPKINS. I am not too familiar. No.

Mr. CONSTANDY. Are you aware of the fact that he had been appraising property for a period considerably in excess of that period which you had been appraising?

Mr. HOPKINS. Actually, no.

Mr. CONSTANDY. You didn't know that?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you feel when you went to Attleboro that you were as qualified as Mr. Svirsky?

Mr. HOPKINS. I felt that I was. Yes.

Mr. CONSTANDY. Keeping in mind, of course, that this was to be a new venture for you, and that the properties that you were about to appraise in Attleboro were of a more substantial nature than those you had appraised in the past. Is that correct?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. When you got to Attleboro, how did you happen to appraise these particular properties?

Mr. HOPKINS. I was assigned to appraise these particular properties.

Mr. CONSTANDY. By whom?

Mr. HOPKINS. The actual assignment?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. I don't recall who gave me the assignment.

It was Mr. Stephen or Mr. Dodge told me I was going down. One of the two.

Mr. CONSTANDY. They told you you were going to Attleboro?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. Did they also tell you which properties you were to appraise when you got there?

Mr. HOPKINS. No.

Mr. CONSTANDY. Did anyone ever tell you which properties would be yours when you got there?

Mr. HOPKINS. Mr. Potter gave me the case folder for the properties.

Mr. CONSTANDY. He specifically assigned you to these properties. Is that correct?

Mr. HOPKINS. Yes.

Mr. CONSTANDY. When you got there Mr. Svirsky had been there and when you left Mr. Svirsky was still there?

Mr. HOPKINS. He was still on the job as far as I know.

Mr. CONSTANDY. Did there remain, at the time you left, a number of properties that had not been appraised?

Mr. HOPKINS. I am not sure.

Mr. CONSTANDY. Do you recall how you were transferred away from Attleboro?

Mr. HOPKINS. How I was transferred away?

Mr. CONSTANDY. Who told you you were transferred away from there?

Mr. HOPKINS. I don't recall.

Mr. CONSTANDY. Someone in a superior position, it must be, told you. Is that right?

Mr. HOPKINS. I am not sure but I think it was John MacNeil.

Mr. CONSTANDY. Are you aware that Mr. Svirsky had been appraising property for the department of public works, I believe in connection with the Southeast Expressway, through the city of Boston?

Mr. HOPKINS. Was I aware of it?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Do you know when that was done?

Mr. HOPKINS. About 1957 I believe. I'm not sure.

Mr. CONSTANDY. Wasn't it prior to that?

Mr. HOPKINS. It could have been.

Mr. CONSTANDY. Didn't they build certain parts of the Southeast Expressway through the city of Boston during the period 1949-50, or at least as to the appraisals of it?

Mr. HOPKINS. You have reference to Boston proper. In the city of Boston?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. Oh, yes. This is in 1953 or 1954 I believe.

Mr. CONSTANDY. Do you know for a fact yourself that he had worked on those takings?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Would that be some indication as to whether he is better qualified than you, at least from the standpoint of the length of time he had been doing it?

Mr. HOPKINS. He probably had more experience in that type of property. Yes.

Mr. CONSTANDY. Yes. He had been doing it longer. Isn't it a fact that those properties in that area where he worked were properties of a considerable value—heavy, very heavy commercial, and industrial properties?

Mr. HOPKINS. That is true.

Mr. CONSTANDY. We will go back again to whether you considered yourself to be as competent as Mr. Svirsky based on the relative experience each of you had had.

Mr. JONES. Mr. Counsel, I don't think that is a proper question to propound to the witness. It is a conclusion as to whether he would be. I think there is a lot of latitude for you to examine the witness on, but if you draw a conclusion as to whether he would be as competent as the next man, that is a matter of total speculation. I don't think it's quite right. Let him testify as to his general qualifications and be sparing of making insinuations on someone less qualified.

Mr. CONSTANDY. Oh, no, Mr. Chairman. The point of it was that Mr. Svirsky was more qualified than he. The point I wanted to make here was that Mr. Svirsky, assigned to that project in Attleboro, was

assigned to perform the appraisals on the residential properties, those being of considerably less value.

MR. JONES. Let the witness testify and you don't draw conclusions. You state the proposition to him.

MR. CONSTANDY. After being assigned to Attleboro, Mr. Hopkins, did there come a time when you met Frank Harney there?

MR. HOPKINS. Yes, sir.

MR. CONSTANDY. Was that soon after you were assigned to Attleboro?

MR. HOPKINS. Immediately.

MR. CONSTANDY. Immediately after you were assigned?

MR. HOPKINS. That's right.

MR. CONSTANDY. How did that meeting come about?

MR. HOPKINS. I called Mr. Harney and requested that he meet me on location.

MR. CONSTANDY. Did he?

MR. HOPKINS. He did.

MR. CONSTANDY. For what purpose did you call him?

MR. HOPKINS. He did some of the preliminary work there and was familiar with the area.

MR. CONSTANDY. Did you hope to receive information from him that would be helpful to you in making your appraisals?

MR. HOPKINS. No, sir.

MR. CONSTANDY. I beg your pardon?

MR. HOPKINS. Not the actual appraisal. No.

MR. CONSTANDY. I say, did you expect to receive some help from him, and assistance from him, to be helpful to you in making your appraisal?

MR. HOPKINS. Yes.

MR. CONSTANDY. At the time you begin to make your appraisal to the State, are you not furnished certain information by the State to assist you in making your appraisal?

MR. HOPKINS. We are; yes.

MR. CONSTANDY. Could you tell us what that information was?

MR. HOPKINS. It is usually a description of the property and, if plans are available, description of all the takings, plus other information regarding the property—purchased from whom, and when, and how much.

MR. CONSTANDY. Did you get all of the preliminary review data?

MR. HOPKINS. We are supposed to get it all. Yes.

MR. CONSTANDY. Did you?

MR. HOPKINS. Yes.

MR. CONSTANDY. Did you get the layout. The layout sheets?

MR. HOPKINS. Did I get them?

MR. CONSTANDY. Yes.

MR. HOPKINS. Yes.

MR. CONSTANDY. Did you get the title summary?

MR. HOPKINS. Yes, there was a title summary.

MR. CONSTANDY. Did you get drawings?

MR. HOPKINS. No. The drawings were made after I went there for the most part.

MR. CONSTANDY. How about the Marshall Stevens work papers, specifically, as to the Damort property? Did you see those?

Mr. HOPKINS. As I recall it, I assisted the man in making the sketches for them.

Mr. CONSTANDY. Was there any information which you should have received which you had not received from the department?

Mr. HOPKINS. Well, when you make an appraisal you want all of the information you can have, naturally you talk to men and if there is any further information it is always welcome.

Mr. CONSTANDY. You try to get as much information as you can, of course.

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. Will you tell us what information you would get from Mr. Harney which would not otherwise be furnished to you by the department?

Mr. HOPKINS. The city of Attleboro to me was sort of an unknown. I had been through there but I was not familiar with the area and I thought that with perhaps a half an hour spent with Mr. Harney I could gain more than I could all day alone.

Mr. CONSTANDY. That may very well be true, but I would like to know what type of information you would get from meeting him?

Mr. HOPKINS. Mr. Harney?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. He can certainly show me the location and show me the properties, and point them out, and the owners.

Mr. CONSTANDY. You had that information, did you not?

Mr. HOPKINS. I had it on the plan. Yes.

Mr. CONSTANDY. Could you read the plan?

Mr. HOPKINS. Certainly.

Mr. CONSTANDY. You are not able to read the plan and find the property?

Mr. HOPKINS. Certainly.

Mr. CONSTANDY. Would that have taken so much time then, having been able to be directed there by Mr. Harney?

Mr. HOPKINS. I wouldn't say he necessarily directed me there. I met him on location.

Mr. CONSTANDY. Did you ride around the project with him?

Mr. HOPKINS. We did.

Mr. CONSTANDY. You had conversations about the various parcels?

Mr. HOPKINS. We did.

Mr. CONSTANDY. Do you remember any of the conversations you had with respect with Damort?

Mr. HOPKINS. Nothing special.

Mr. CONSTANDY. Do you remember the information you received from him?

Mr. HOPKINS. Do I remember what it was?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. Well, more or less pointed up the different properties and owners, and the takings, and what they were.

Mr. CONSTANDY. Did you ever discuss value with Mr. Harney on that trip?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did Mr. Harney express himself as to value on that trip?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. I am speaking specifically yet about the Damort property.

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. He said nothing which gave you any indication as to what he considered the value of that property to be?

Mr. HOPKINS. No, sir, he did not.

Mr. CONSTANDY. At some time did you have a trip around the project with Mr. Elton Stephen?

Mr. HOPKINS. I did.

Mr. CONSTANDY. Was that after your visit with Mr. Harney?

Mr. HOPKINS. It was some time after.

Mr. CONSTANDY. And what did you do on that occasion?

Mr. HOPKINS. Talked about the problems of the different properties—the appraisal problems.

Mr. CONSTANDY. Did you talk about Damort?

Mr. HOPKINS. We talked about them all.

Mr. CONSTANDY. Did you talk about Damort?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Were there any problems in connection with Damort that you talked about with Mr. Stephen?

Mr. HOPKINS. There was no special problem with Damort. No, sir.

Mr. CONSTANDY. Did there come a time when you had a conversation with Mr. Harney when Mr. Dodge and Mr. Stephen were present?

Mr. HOPKINS. We were all present. That's right.

Mr. CONSTANDY. Mr. Dodge is Mr. Herbert Dodge. Is that correct?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. What function did he serve at that time?

Mr. HOPKINS. At that time I believe he was the acting right-of-way engineer.

Mr. CONSTANDY. And Mr. Stephen?

Mr. HOPKINS. I am not familiar with his title but he was serving in the capacity of review appraiser.

Mr. CONSTANDY. And as such he was superior to you. Is that correct?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Would this have been during the time or at the time the approval was given to your Damort appraisal?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. This was prior to that?

Mr. HOPKINS. Prior to that.

Mr. CONSTANDY. Mr. Harney was present?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Had your appraisal on Damort been completed by then?

Mr. HOPKINS. I don't believe any of them had been completed by then. None of them.

Mr. CONSTANDY. Do you remember about when this was relative to the time you completed the Damort appraisal?

Mr. HOPKINS. Offhand I don't remember. No, sir.

Mr. CONSTANDY. What did you discuss on that occasion relative to Damort?

Mr. HOPKINS. I had nothing special regarding Damort.

Mr. CONSTANDY. Did you visit the Damort property?

Mr. HOPKINS. I beg your pardon?

Mr. CONSTANDY. Did you visit the Damort property?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Did Mr. Dodge make any expression as to his thoughts on value?

Mr. HOPKINS. No.

Mr. CONSTANDY. Mr. Stephen?

Mr. HOPKINS. No.

Mr. CONSTANDY. Mr. Harney?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Yourself?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you disclose to them at that time, or at any time, what figure you were going to come in with?

Mr. HOPKINS. Are you talking specifically about Damort?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. No, sir.

Mr. JONES. May I inquire of counsel? Is there evidence of the fact that there was collusion between these appraisers as to price?

Mr. CONSTANDY. That is what we are coming to determine, Mr. Chairman.

Mr. JONES. Well, proceed.

Mr. CONSTANDY. Did Mr. Harney participate in the discussion at the time you met with Mr. Dodge and Mr. Stephen?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Do you recollect what this participation was?

Mr. HOPKINS. Just general conversation, regarding properties.

Mr. CONSTANDY. Again, specifically about Damort. Do you recollect any conversation he had about Damort?

Mr. HOPKINS. Not in relation to Damort. No.

Mr. CONSTANDY. And at that time had he concluded his preliminary work?

Mr. HOPKINS. Mr. Harney?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. Yes.

Mr. CONSTANDY. At that time had you concluded your fieldwork after you made your appraisal of Damort?

Mr. HOPKINS. I don't believe so.

Mr. CONSTANDY. Did you ever discuss the Damort appraisal with Mr. Lawton or Mr. Myette?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you ever meet Mr. Myette or Mr. Lawton during the period you were making your appraisal?

Mr. HOPKINS. I met Mr. Lawton on one occasion.

Mr. CONSTANDY. Where was that?

Mr. HOPKINS. It was either in or beside the Charpentier property.

Mr. CONSTANDY. What were you doing there?

Mr. HOPKINS. What was I doing there?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. I was making appraisals.

Mr. CONSTANDY. You were at that time making your appraisal on Charpentier?

MR. HOPKINS. I was working on all of them at the same time.

MR. CONSTANDY. At the moment you met him what were you doing?

MR. HOPKINS. I don't remember.

MR. CONSTANDY. You were on the Charpentier property?

MR. HOPKINS. Yes, sir.

MR. CONSTANDY. It is reasonable to assume, is it not, that if you were on that property, and you were making your appraisals generally, you were probably making your appraisal on the Charpentier property?

MR. HOPKINS. That could be so.

MR. CONSTANDY. Was anyone else present?

MR. HOPKINS. As I recall it there was someone with Mr. Lawton. I don't know who he was.

MR. CONSTANDY. Did you have a conversation with Mr. Lawton?

MR. HOPKINS. No conversation. Just spoke to him.

MR. JONES. The Chair would like to say that this matter about which the witness is testifying seems to be a matter of great moment. If any of the members of the committee would like to interrogate him at this point, I think it is a good time to examine him.

MR. WRIGHT. Mr. Chairman.

MR. JONES. Mr. Wright.

MR. WRIGHT. Mr. Hopkins, it may be that I am getting ahead of the story here. I am not sure. But there was testimony the other day by one of the other witnesses, I believe Mr. Webb or Mr. Myette, to the effect that you had called him at his home and had told him that you might have a little trouble getting the price that he had hoped to get for this Damort property.

MR. HOPKINS. I never called anyone at their home.

MR. WRIGHT. You categorically deny that you talked with any such person on any such thing. Is that correct?

MR. HOPKINS. I talked with Mr. Webb, but not at his home.

MR. WRIGHT. Did you call Mr. Webb at any other place and tell him you thought you might have a little trouble getting the price he expected for the Damort property?

MR. HOPKINS. I called Mr. Webb, but I didn't express myself in that manner.

MR. WRIGHT. Did you discuss with Mr. Webb anything relating to the prospects of the price he might expect to get from the State for his property?

MR. HOPKINS. No, sir.

MR. WRIGHT. You deny then that the conversation took place to which Mr. Webb alluded, respecting your telephone call and your comment about the price of property?

MR. HOPKINS. I made no comment.

MR. JONES. Any further questions?

MR. CRAMER. What did you call him for?

MR. HOPKINS. I called Mr. Webb primarily to find out where I could obtain the keys to get into the property.

MR. CRAMER. You didn't discuss the property with him at all at that time?

MR. HOPKINS. Sure I did.

MR. CRAMER. What did you say to him, and what was the discussion?

MR. HOPKINS. I was just verifying certain facts.

MR. CRAMER. Like what?

Mr. HOPKINS. The price he paid for it, and the rent he was getting for the store.

Mr. CRAMER. What did he say he paid for it?

Mr. HOPKINS. \$20,000.

Mr. CRAMER. So you knew he paid \$20,000 for it because you asked Mr. Webb personally. Right?

Mr. HOPKINS. I asked Mr. Webb personally. That's right.

Mr. CRAMER. How did you come to a conclusion in your appraisal that it was worth \$54,000 if Mr. Webb, just a few years before, had paid only \$20,000?

Mr. HOPKINS. The basis of the appraisal would not be on what Mr. Webb paid for it.

Mr. CRAMER. That is one of the important elements, is it not?

Mr. HOPKINS. You must bear in mind that is a depressed, or that was a depressed piece of property caused by the rumors of the roadway.

Mr. CRAMER. At the time Mr. Webb bought it, it was a depressed piece of property?

Mr. HOPKINS. I would say so.

Mr. CRAMER. How do you know that?

Mr. HOPKINS. It was in the estate and——

Mr. CRAMER. Did Mr. Webb say so when you talked to him about it?

Mr. HOPKINS. No, sir.

Mr. CRAMER. What basis did you have for coming to that conclusion?

Mr. HOPKINS. That it was depressed?

Mr. CRAMER. Yes.

Mr. HOPKINS. I believe it was in the Phillips estate, if I remember correctly.

Mr. CRAMER. And it had been in the estate for some time and they had been trying to sell it on the open market for some time, hadn't they?

Mr. HOPKINS. I believe so. I believe that testimony was brought out here.

Mr. CRAMER. Yes. The testimony shows there was nothing depressed about it, but it was on the market for some time, but it was such a bad property they couldn't sell it. Isn't that what the record shows?

Mr. HOPKINS. There were rumors of a roadway through there for some time and that nobody would buy or rent a piece of property under such conditions.

Mr. GRAY. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. GRAY. The record shows this property was bought in February 1956, and I will remind my colleague from Florida that we didn't pass the act until later in the year 1956, so it would have been impossible to know this road was coming through.

Mr. CRAMER. It would be well if you reminded the witness. I know that. What do you have to say about that? That is a very good point, I will say to my distinguished colleague. How did they know this interstate highway was going through there when the bill was not passed for the Interstate Highway System until August 1956?

Mr. HOPKINS. Are you talking about a prior sale?

Mr. CRAMER. I am talking about the Webb sale, the thing you asked him about, that he said he paid \$23,000 for, which took place in 1956.

The act was not passed until late 1956. Why did he think there was going to be a great interstate highway going through there?

Mr. HOPKINS. Why would he buy it?

Mr. CRAMER. Why would you think it was a depressed price because of that, when it could not have been a fact at that time?

Mr. HOPKINS. I believe the preliminary study of the area was made sometime in 1955, or 1956, which involved these properties.

Mr. CRAMER. Did Mr. Webb tell you he had knowledge of that when he bought it?

Mr. HOPKINS. I didn't ask him. He didn't volunteer the information.

Mr. CRAMER. But you just assumed that he must have paid that for it because he must have had knowledge of it even though you didn't ask him about it?

Mr. HOPKINS. I assume he bought it because it was a reasonable price, because it was depressed property.

Mr. CRAMER. Was this kind of an assumption the kind of assumptions you made throughout your appraisals?

Mr. HOPKINS. No, sir.

Mr. CRAMER. Then why would you make that kind of assumption in this instance?

Mr. HOPKINS. I appraised the property for what I thought was the actually fair value.

Mr. CRAMER. Why would you make that assumption in this instance, that Mr. Webb's price was a depressed price?

Mr. HOPKINS. Because of it being in the estate.

Mr. CRAMER. We are just going around in circles.

Mr. JONES. Any other questions?

Mr. CRAMER. I am interested in knowing about this system whereby you, as negotiator and as an appraiser, can be on the State payrolls for 8 years under 6-month appointments. That is a pretty interesting system. How does it operate? They appoint you every 6 months. Is that it?

Mr. HOPKINS. Yes, sir.

Mr. CRAMER. Then in effect your appointment the following 6 months depends on how you render services supposedly the previous 6 months. Is that it?

Mr. HOPKINS. I would assume so.

Mr. CRAMER. Don't you have civil service?

Mr. HOPKINS. We do now, yes.

Mr. CRAMER. Did you have it then?

Mr. HOPKINS. No, sir.

Mr. CRAMER. Did you have a merit system?

Mr. HOPKINS. No, sir.

Mr. CRAMER. Was it customary to employ for 6-month periods negotiators and appraisers?

Mr. HOPKINS. Your appointment ran for 6 months.

Mr. CRAMER. All appointments?

Mr. HOPKINS. All temporary appointments.

Mr. CRAMER. How many temporary appointees were there in the negotiation or right-of-way department?

Mr. HOPKINS. At the present time?

Mr. CRAMER. At this time, in 1956, or when were you first employed?

Mr. HOPKINS. In 1954.

Mr. CRAMER. All right. How long were you employed before civil service came into being?

Mr. HOPKINS. Seven years.

Mr. CRAMER. It didn't come into being until 1961?

Mr. HOPKINS. That is correct.

Mr. CRAMER. Just recently?

Mr. HOPKINS. That is correct.

Mr. CRAMER. Up to that time the State had no merit system for State employees?

Mr. HOPKINS. That's right. Not for temporary employees.

Mr. CRAMER. Not for temporaries. How many temporary employees were there in this right-of-way department?

Mr. HOPKINS. You mean in 1954?

Mr. CRAMER. Starting in 1954. Yes.

Mr. HOPKINS. It would be an estimate; 15.

Mr. CRAMER. How many are there now?

Mr. HOPKINS. It is well over 100 I am sure, 150 perhaps.

Mr. CRAMER. Over 100 on temporary appointments?

Mr. HOPKINS. I believe so.

Mr. CRAMER. Over 100 people on temporary appointments?

Mr. HOPKINS. I believe so, I'm not sure.

Mr. CRAMER. And they serve for 6-month periods?

Mr. HOPKINS. That is correct.

Mr. CRAMER. How long do you have to serve temporarily before you can qualify for permanent, if there is such a thing?

Mr. HOPKINS. I don't know.

Mr. CRAMER. Pardon?

Mr. HOPKINS. I don't know.

Mr. CRAMER. You served 8 years. Are you still temporary?

Mr. HOPKINS. That is correct.

Mr. CRAMER. How long do other State employees have to serve before they become permanent. What do they have to do to qualify? Isn't 8 years' service enough?

Mr. HOPKINS. I would think so.

Mr. CRAMER. Why haven't you qualified for a permanent position?

Mr. HOPKINS. Because it is not a permanent position.

Mr. CRAMER. Have you made application for a permanent negotiator's position? They do have such positions, don't they?

Mr. HOPKINS. Yes, sir; I believe they do.

Mr. CRAMER. Have you made application for it?

Mr. HOPKINS. I am too far down the list on the civil service list.

Mr. CRAMER. And they have about 100 that are in the same status you are?

Mr. HOPKINS. That is correct.

Mr. CRAMER. What do you do for job security then?

Mr. HOPKINS. What do I do?

Mr. CRAMER. Is there any retirement involved?

Mr. HOPKINS. No, sir.

Mr. CRAMER. What is your salary?

Mr. HOPKINS. \$131.25.

Mr. JONES. He means an annular salary.

Mr. HOPKINS. I have to contribute. I don't know.

Mr. CRAMER. \$131.25 a month. Is that right?

Mr. HOPKINS. No. Weekly.

Mr. CRAMER. What was your salary when you started?

Mr. JONES. Mr. Cramer, I will say this: The gentleman had better get up his income tax, if he does not know how much he makes in a year. Old Buster Boy, you have a rude awakening when you get through here, on April 15 when you have to file that income tax, because contrary to all beliefs in the United States we have to pay taxes as well as the next fellow, so we have to get prepared for that, too. So you had better find out how much you make annually because you had better write it down in a book and send it to Uncle Sam down here.

Mr. HOPKINS. I am in the process of preparing my returns now.

Mr. JONES. We all are. It is distressing.

Mr. CRAMER. He will undoubtedly get his withholding statement so he will know how much he was paid and what he still owes, at the proper time.

Mr. SCHERER. If this Congress keeps spending they are going to have to dig deeper.

Mr. JONES. The gentleman from Ohio is out of order because we Democrats are so frugal we won't ever spend another \$100 except when we have to.

Mr. KLUCZYNSKI. Mr. Chairman, let's proceed in regular order.

Mr. CRAMER. Mr. Chairman, I didn't intend to get into a discussion of the \$9 billion deficit this year, but I would like to continue here. To me it is a rather interesting employee situation where a man is temporarily employed at 6-month intervals for a period of 8 years now. To me that means—who was your supervisor? Who tells you you are rehired at the end of 6-month periods?

Mr. HOPKINS. No one. I just keep on working.

Mr. CRAMER. As long as they don't fire you you are still a temporary?

Mr. HOPKINS. That's correct.

Mr. CRAMER. Who was your boss?

Mr. HOPKINS. My boss?

Mr. CRAMER. Yes.

Mr. HOPKINS. Mr. Dodge.

Mr. CRAMER. He is the man in charge of this department—the right-of-way department?

Mr. HOPKINS. That is correct.

Mr. CRAMER. So as long as he does not tell you you are fired, you are there. Is that right?

Mr. HOPKINS. That is right.

Mr. CRAMER. That means during that 6-month period you had better perform the way Mr. Dodge wants you to perform, doesn't it?

Mr. HOPKINS. As long as I do my work satisfactorily.

Mr. CRAMER. I just brought this out to illustrate it is a very interesting situation where the employee is subject to rehiring every 6 months and they have about 100 of them on the payroll. The staff indicates that they have, according to their records, as many as 150—100 out of 150—and two-thirds of them are temporary employees.

Mr. HOPKINS. That is right.

Mr. CRAMER. Has there been any effort in the department that you know of to get the positions made available on a permanent basis?

Mr. HOPKINS. Not that I know of.

Mr. CRAMER. Was there any effort when this new program went into effect in 1956 to get more permanent positions under civil service? Well, civil service was not in existence then, was it?

Mr. HOPKINS. That is correct.

Mr. CRAMER. Has there been a substantial increase in permanent employees of this 150, part of which are temporaries? Has there been a substantial increase in the permanent positions since 1956, since you have been there?

Mr. HOPKINS. I don't think so. It could be some increase. I'm not sure.

Mr. CRAMER. Even with this accelerated interstate highway program in which the Federal Government is spending more money than at any other time in history of the country on highways, and the States are implementing the accelerated program, they haven't even seen fit to increase the number of permanent positions.

Mr. HOPKINS. I'm not too familiar with it.

Mr. CRAMER. Mr. Dodge can probably answer it further. Thank you.

Mr. JONES. Are there any other questions?

Mr. SCHWENGEL. Mr. Chairman.

Mr. JONES. Yes, Mr. Schwengel.

Mr. SCHWENGEL. I would like to ask if this gentleman knows who established this system of temporary employment?

Mr. HOPKINS. I am not familiar with it.

Mr. SCHWENGEL. The highway commission? Do you have a highway commission?

Mr. HOPKINS. I'm not sure. I'm not sure.

Mr. SCHWENGEL. You don't know whether it is according to State law, or according to the policy of the highway commission?

Mr. HOPKINS. It could be the policy of the highway commission.

Mr. SCHWENGEL. It could be the policy of the highway commission?

Mr. HOPKINS. I'm not sure.

Mr. JONES. Is there any further question? Does counsel have any further inquiry?

Mr. CONSTANDY. Yes.

Mr. JONES. Proceed.

Mr. CONSTANDY. Mr. Webb has testified after he had a telephone conversation with you he addressed a letter to Mr. O'Connell and in the letter he disclosed to Mr. O'Connell that fact that he had been contacted by you, and sometime after that date he had a conversation, he testified, with Mr. Harney, and he quoted Mr. Harney as saying that he, Mr. Harney, had told you, Mr. Hopkins, that if you wanted your job with the State you had better mind your own business. Did you have such a conversation with Mr. Harney?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you have any conversation with Mr. Harney at all about the telephone conversation you had with Mr. Webb?

Mr. HOPKINS. I don't believe so. No.

Mr. CONSTANDY. Do you have a copy of your appraisal there?

Mr. HOPKINS. I have nothing.

Mr. CONSTANDY. May I offer you it?

Mr. HOPKINS. I wish you would.

Mr. CONSTANDY. Is it correct you used the appraisal approach—reproduction less proved depreciation?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. Is that the only appraisal approach you did use?

Mr. HOPKINS. Outside of establishing the price for the land.

Mr. CONSTANDY. The land values were established in what way?

Mr. HOPKINS. Comparable sales. This appraisal report is not complete.

Mr. CONSTANDY. No, I am only directing your attention to the computations which appear on page 2.

Mr. HOPKINS. All right.

Mr. CONSTANDY. You stated in your appraisal, "Lumber storage barn 7,000 square feet times \$5—\$35,000. Less depreciation, 25 percent, or a figure of \$8,750," giving you a depreciated value of \$26,450. Is that correct?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. At the time you made your appraisal you did not have available the segregated cost, Marshall Stevens approach, made by someone else in connection with preliminary work?

Mr. HOPKINS. I don't recall. I don't recall whether there was or not.

Mr. CONSTANDY. If it had been made for any purpose at all it would have to be made before you did your appraisal, wouldn't it?

Mr. HOPKINS. If I was going to utilize it. Yes.

Mr. CONSTANDY. In the file of the department of public works on the Damort Land Co. we find such a reproduction cost estimate. It was figured on the basis of \$4.25 a square foot with a value to the buildings of \$29,750. I err—\$29,297. You used \$35,000. That \$29,297 was before depreciation. Having that available, why did you use \$35,000?

Mr. HOPKINS. Do you have a copy of the Marshall Stevens statements here?

Mr. CONSTANDY. They rounded off their figure before depreciation, did they not, to \$30,000?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. Yet you used \$35,000?

Mr. HOPKINS. That is correct. I did it on a square foot basis.

Mr. CONSTANDY. What basis did they use?

Mr. HOPKINS. They used it on a segregated cost. You can compute the square feet.

Mr. CONSTANDY. Is one process more accurate than the other?

Mr. HOPKINS. I wouldn't say so.

Mr. CONSTANDY. At the time you used \$35,000, were you aware of their estimate of \$30,000?

Mr. HOPKINS. This is in the folder. I must have been.

Mr. CONSTANDY. I don't suggest, Mr. Hopkins, that even \$30,000 is the appropriate figure, but I simply point out the fact that it was there in the file in someone else's work preliminary to your own, where they found by taking the building apart, in effect by computing how much it cost to put those different parts back together in that area, they come to a figure of \$30,000. You used \$5 a square foot. Could you tell us how you arrived at \$5 a square foot?

Mr. HOPKINS. I got that out of the calculator cost on the Marshall Stevens.

Mr. CONSTANDY. If that preliminary work is not going to be used, why do it?

Mr. HOPKINS. The preliminary work?

Mr. CONSTANDY. Yes. The Marshall Stevens.

Mr. HOPKINS. I do it as part of the appraisal.

Mr. CONSTANDY. Having been done, shouldn't it have some effect on your thinking, may I ask?

Mr. HOPKINS. Not if I disagree with it.

Mr. CONSTANDY. Did you disagree with it in this case?

Mr. HOPKINS. Sure I did.

Mr. CONSTANDY. Did you have a reason for disagreeing with it?

Mr. HOPKINS. Yes. The type of building it is.

Mr. CONSTANDY. In what way did that affect your disagreement?

Mr. HOPKINS. You must bear in mind this is a two-story building and not a one-story building.

Mr. CONSTANDY. It has one floor, though.

Mr. HOPKINS. No, it has two floors. I mean, part of two floors.

Mr. CONSTANDY. It is a lumber storage warehouse. There is, if you want to call it that—I don't know what the title would be, but something similar to a mezzanine on each side of a long track running the length of it, is it not?

Mr. HOPKINS. I didn't get your question, sir.

Mr. CONSTANDY. It has a shelf along the sides inside, doesn't it?

Mr. HOPKINS. Yes, two shelves.

Mr. CONSTANDY. For lumber. One on each side of the railroad track.

Mr. GRAY. It has a loft in it.

Mr. HOPKINS. Yes. It is two stories.

Mr. CONSTANDY. The question was brought up this morning of what basis Mr. Beasley used to arrive at a figure for the building, and the figure he did use was \$16,232. Is that right, Mr. Beasley?

Mr. BEASLEY. Replacement.

Mr. CONSTANDY. Based on \$3 per square foot?

Mr. BEASLEY. Approximately.

Mr. CONSTANDY. How did you determine a depreciation of 25 percent?

Mr. HOPKINS. The building itself is in excellent condition. Most of the depreciation would be for physical deterioration, economic obsolescence.

Mr. CONSTANDY. There are various forms of depreciation.

Mr. HOPKINS. Three.

Mr. CONSTANDY. Which did you use?

Mr. HOPKINS. Physical deterioration and economic obsolescence.

Mr. CONSTANDY. Would you translate that to us? Does it bear a relationship to how old the building is and how long you expect it to last?

Mr. HOPKINS. Physical deterioration would more or less determine how long you would expect the building to last.

Mr. CONSTANDY. You based this on your observation of the building?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Or computations?

Mr. HOPKINS. On my own observation.

Mr. CONSTANDY. Could you tell us what the Marshall Stevens figure was for the smaller building—the one used as the dairy store?

Mr. HOPKINS. Was there a Marshall Stevens on this here? Do you have a copy of it there?

Mr. CONSTANDY. It is at the bottom of that one.

Mr. HOPKINS. Oh, you mean the calculated cost?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. \$3,500.

Mr. CONSTANDY. What figure did you use?

Mr. HOPKINS. \$3,500.

Mr. CONSTANDY. On the smaller building you agreed to it?

Mr. HOPKINS. Yes.

Mr. CONSTANDY. I direct your attention to the figure you gave for the track. Would you turn over to the front page of the appraisal report and read to me the description of the track? The length of it?

Mr. HOPKINS. 475 feet.

Mr. CONSTANDY. Would you turn over to your work on the other side of that same sheet. What length did you have?

Mr. HOPKINS. 640 feet.

Mr. CONSTANDY. There seems to be a difference.

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Can you explain the difference?

Mr. HOPKINS. Well, I measured it.

Mr. CONSTANDY. You measured it and found the other to be in error?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. Mr. Beasley, did you measure it?

Mr. BEASLEY. Yes, sir. I have a blueprint on it.

Mr. CONSTANDY. Did you calculate the length of it?

Mr. BEASLEY. Yes, sir.

Mr. CONSTANDY. What figure did you find?

Mr. BEASLEY. This is the actual track map furnished by the railroad and it shows 488 feet on the property and 195 feet that belongs to the railroad on their right-of-way. A difference there of 195 feet is from the railroad switch into the property and belongs to the railroad. So the total amount of track on the property was 488 feet.

Mr. CONSTANDY. Then you were wrong, Mr. Hopkins, apparently?

Mr. HOPKINS. I measured the track. I assumed that the track all belonged to the owners of the property.

Mr. CONSTANDY. It didn't, did it?

Mr. HOPKINS. Well, I don't know.

Mr. CONSTANDY. You heard Mr. Beasley say it.

Mr. HOPKINS. I heard what he said.

Mr. CRAMER. We have expanding prices. I expect we can expect expanding property now.

Mr. CONSTANDY. I would like to point out the difference in value based on your own figures would be some \$2,000—\$1,980 to be exact. You could have reduced your appraisal by \$2,000 on that on point. You used a figure of 40 cents per square foot on 32,500 square feet of industrial lands. Is that correct?

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. And you based that on comparables.

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. And with adjustments.

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Did you find any comparable sales to use in your appraisals?

Mr. HOPKINS. I found a few. Yes.

Mr. CONSTANDY. You told us earlier you didn't find any.

Mr. HOPKINS. I beg your pardon?

Mr. CONSTANDY. I believe you told us earlier you didn't find any. Let me put it more clearly. You had five comparable sales you furnished to us as being the basis for your 40 cents.

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. You only used the first three. You told us none of them were industrial. We checked further and found that the last two were industrial and the first three were not.

Mr. HOPKINS. Have you any reference to the Thomas Meade property? Sold by Thomas Meade?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. Those two properties.

Mr. CONSTANDY. You had five and used three and told us none of the five were industrial. It turns out that the last two were industrial, and you only used the first three. In other words, you had five, two of which were industrial, and you did not use any of the industrial sales but did use the three that were not.

Mr. HOPKINS. Are you referring to the three out on Washington Street?

Mr. CONSTANDY. I am. The Old Colony Advertising Co. to First National, and York to First National, and Walsh to First National. You stated you reached no conclusion of value on sales four and five, they being the two industrial parcels where the grantor was Mr. Meade. You used No. 1 which indicated a square foot value of 50 cents and you used No. 2 which indicated a square foot value of \$1.70, and you used No. 3 which indicated a square foot value of 78 cents. I would like to point out again that the sales you used were on Route 1, the main thoroughfare throughout the area—the place in the whole area where it was most built up—and the sales you used were only commercial, and not industrial.

Mr. HOPKINS. That is correct.

Mr. CONSTANDY. How did this help to make an adjustment? The industrial is a—

Mr. HOPKINS. You can adjust in your mind if you have nothing better to work with.

Mr. CONSTANDY. I beg your pardon?

Mr. HOPKINS. If you have nothing better to work with you have to use what you have.

Mr. CONSTANDY. Did you find nothing better to work with?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. How about the two sales you didn't use?

Mr. HOPKINS. Those could not be provided with railroad facilities.

Mr. CONSTANDY. I beg your pardon?

Mr. HOPKINS. Those could not be provided with railroad facilities.

Mr. CONSTANDY. What was your evaluation of those two sales, Mr. Beasley?

Mr. BEASLEY. Just quickly, we considered the sales not as a criteria particularly here but did analyze them and came up with anything from 5 to 10 cents a square foot for the land, apportioning the remainder of the value transferred to the buildings on those Meade sales.

Mr. CONSTANDY. Relative to the comparables or while doing the Damort appraisal, did you have contact with Mr. Joseph Schwartz?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you at any time?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. You never talked with Mr. Joseph Schwartz?

Mr. HOPKINS. I talked with him in the office one day.

Mr. CONSTANDY. In whose office?

Mr. HOPKINS. In the Boston office, the right-of-way office.

Mr. CONSTANDY. What did you talk to him about?

Mr. HOPKINS. Nothing special. Just passed the time of day.

Mr. CONSTANDY. In our earlier conversations you stated you had had conversations with Mr. Schwartz regarding some of the appraisals to which he had been assigned, and at that time you stated you discussed comparable sales with Mr. Schwartz.

Mr. HOPKINS. I could have.

Mr. CONSTANDY. You could have? Did you?

Mr. HOPKINS. I could—

Mr. CONSTANDY. Did you have a conversation with Mr. Schwartz in which you discussed comparable sales?

Mr. HOPKINS. I don't recall that I did, but if the note says so, it was probably so.

Mr. CONSTANDY. The note is only made up from my earlier conversation with you. From whom did you get the comparable sales you used?

Mr. HOPKINS. From whom did I get them?

Mr. CONSTANDY. Yes.

Mr. HOPKINS. From the registry of deeds at Taunton.

Mr. CONSTANDY. You went there yourself?

Mr. HOPKINS. Yes.

Mr. CONSTANDY. And secured them?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. You were aware Mr. Beasley was able to secure several more, perhaps more comparable?

Mr. HOPKINS. I imagine Mr. Beasley had more time than I had.

Mr. CONSTANDY. Was this a rush job?

Mr. HOPKINS. I was all alone on it.

Mr. CONSTANDY. Did you ever receive any comparable sales from Mr. Collins?

Mr. HOPKINS. I never met Mr. Collins until I went to Fall River. No, sir.

Mr. CONSTANDY. Until you went to Fall River?

Mr. HOPKINS. The answer is "No."

Mr. CONSTANDY. There came a time when you did meet him?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. After that time, did you ever receive any comparable sales from him?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you ever receive any comparable sales from Mr. Harney?

Mr. HOPKINS. No, sir.

Mr. CONSTANDY. Did you ever receive any comparable sales from Mr. Jacobs?

Mr. HOPKINS. I have talked about comparable sales to Mr. Jacobs and he gave me some that I already had.

Mr. CONSTANDY. When was that?

Mr. HOPKINS. That was during the time I was in Attleboro.

Mr. CONSTANDY. What property were you appraising then?

Mr. HOPKINS. Shaw Realty.

Mr. CONSTANDY. Do you know whether Mr. Jacobs was appraising that property?

Mr. HOPKINS. He said he was not.

Mr. CONSTANDY. You received comparable sales on the Shaw Realty property from Mr. Jacobs?

Mr. HOPKINS. I don't follow you.

Mr. CONSTANDY. You did receive comparable sales from Mr. Jacobs that related to the Shaw Realty property.

Mr. HOPKINS. The ones I already had. The ones I already had.

Mr. CONSTANDY. The fact that that came up seems to indicate a willingness on your part that if he had something you didn't have you would use it. Is that correct?

Mr. HOPKINS. After I confirmed it. Yes.

Mr. CONSTANDY. Mr. Beasley, did you review the contents of Mr. Hopkins' appraisal?

Mr. BEASLEY. Yes, sir.

Mr. CONSTANDY. What were your conclusions concerning his report?

Mr. BEASLEY. I would like to make one point clear, that is, that these department of public works appraisals are entitled, "Appraisal." It is a form and as has been described on the second page there is a mathematical calculation which usually sets forth the arithmetic of the cost approach to value. It is an appraisal, as we have been heretofore discussing, where three approaches to value are used and correlated to arrive at a conclusion. So the department of public works form is a one-page mathematical calculation, by and large. It is actually executed apparently by a number of people who fill in information, such as past sales data, and information on legal descriptions, and so forth. And involving this cost estimate calculated here, we found that basically the computation was excessive in land value and in building and, as a matter of fact, we don't consider it to be a true appraisal. It is simply a résumé of arithmetic as applicable to this one case as this individual saw it.

Mr. CONSTANDY. Therefore, his appraisal was undocumented?

Mr. BEASLEY. No support. No documentation.

Mr. CONSTANDY. Mr. Hopkins, did you have any conversation with any person whatever relative to value of the Damort property?

Mr. HOPKINS. Only Mr.—

Mr. CONSTANDY. Anybody during the course of this whole period. Did you discuss the value of that property with anyone?

Mr. HOPKINS. Mr. Stephen.

Mr. CONSTANDY. With Mr. Stephen. Did you discuss with him what you thought it was worth?

Mr. HOPKINS. After I completed my appraisal, yes. He approved it.

Mr. CONSTANDY. Was your original appraisal figure \$54,000?

Mr. HOPKINS. Yes.

Mr. CONSTANDY. What was Mr. Stephen's opinion?

Mr. HOPKINS. Well, he looked it over for form and was satisfied with it.

Mr. CONSTANDY. And he approved it?

Mr. HOPKINS. Yes, sir.

Mr. CONSTANDY. Mr. Beasley, could you make a comment relative to the degree to which the appraisals that have been submitted on the Damort Land Co., that is, Mr. Lawton, Mr. Collins, Mr. Hopkins, and Mr. Schwartz, conformed to the accepted standards for appraisals within the profession or how those appraisals either meet or fail to meet the requirements of the Bureau of Public Roads and the Massachusetts Department of Public Works?

Mr. BEASLEY. None of the fee appraisals that have been submitted or were reviewed here and discussed follow the standard appraisal practice as practiced in the profession where written reports requiring documentation and support are required. These appraisals do not follow form, format; they do not have the content that is required. They do not meet the minimum standards as set forth by the department of public works which has a very voluminous set of instructions as to how appraisals shall be prepared and documented and reported, and this, of course, does not—these reports do not meet the Bureau of Public Roads minimum requirements for Federal aid reimbursement purposes.

Mr. CONSTANDY. Mr. Beasley, appraisals done in the form that was followed by any of the four gentlemen we have made reference to, do they not permit any one of them, or indeed anybody else, to put down any figure that they want to as to their findings of value?

Mr. BEASLEY. Without support, so that someone can review it and determine the competence of the figures and facts that are presented, there is no way that it can be evaluated. It is simply a statement of fact and has to be accepted on its face value and, unless the specifications are followed which require comparable sales analysis, relation to the property, income analysis, and its capitalization in proper form, and the cost less depreciation, all brought into balance and then correlated for a conclusion as prescribed by specifications, there is no way that anyone from here on would ever know whether it was a fair value or not.

Mr. CONSTANDY. Thank you.

Mr. Chairman, I would like to offer department of public works appraisal report as exhibit 17. I have no further questions of the witness.

Mr. KLUCZYNSKI. With no objection, it is so ordered.

(The document referred to was marked for identification and received as exhibit 17 and is retained in subcommittee files.)

Mr. CRAMER. I have just one question. In other words, you are saying, Mr. Beasley, that according to the appraisal report of Mr. Schwartz and Mr. Collins, that what they had was a summarization sheet of value, without supporting background data and information so that in reviewing the appraisals, the reviewing officer and review board could determine whether the conclusion reached is a fair one. Is that correct?

Mr. BEASLEY. There is nothing—there is no basis for a person to read these reports and go behind these values and determine whether or not they are fair. In them, in other words, there is a statement of value as far as the cost approach is concerned, which most of them rely on. They don't even give the new estimate less depreciation; but in most instances there is a statement of fact only, and there is

no way to go behind it, unless you go yourself and make a new appraisal.

Mr. CRAMER. To do that, of course, defeats completely the purpose of hiring the man in the first place.

Mr. BEASLEY. Exactly.

Mr. CRAMER. How much value are these appraisals? Are they of any real value to the taxpayer who ends up paying for them?

Mr. BEASLEY. In my opinion they are worth nothing.

Mr. CRAMER. As a matter of fact, if you have to use them as a basis for a settlement they end up being a detriment instead of a help, don't they?

Mr. BEASLEY. Exactly.

Mr. CRAMER. You studied this Attleboro area. You made appraisals; did you not?

Mr. BEASLEY. Yes, sir.

Mr. CRAMER. And you know what was finally settled for and you know what the other appraisals were. How much money more than should have been paid, was paid to people in the Attleboro area alone, would you estimate?

Mr. BEASLEY. I don't believe that I have ever set down exactly a computation. I think it would be fair, in the several parcels that have been reviewed here, to say that it is a good \$100,000, in two pieces of property, that are unaccounted for.

Mr. CRAMER. How much?

Mr. BEASLEY. \$100,000, in just two pieces of real estate, or two parcels of real estate.

Mr. CRAMER. In which two now?

Mr. BEASLEY. Charpentier and Damort.

Mr. CRAMER. So in two pieces alone—

Mr. BEASLEY. Just two pieces alone.

Mr. CRAMER. You found in your opinion that the amount paid was \$100,000 in excess of what you found to be the reasonable market price. Is that right?

Mr. BEASLEY. Approximately. Yes, sir.

Mr. KLUCZYNSKI. Any further questions? If not, the witness is dismissed.

Mr. WRIGHT. Mr. Chairman, just a moment. Mr. Hopkins, there was testimony the other day from another witness who quoted a conversation which took place in Mr. O'Connell's office, in which Mr. Harney was supposed to have made a reference to you. Are you familiar with that testimony before this subcommittee? One of the witnesses who, I believe, was Mr. Webb, said he met Mr. Harney and Mr. O'Connell in Mr. O'Connell's office, and he related to him this alleged telephone conversation in which he stated you had called him and said there might be some trouble in getting the price that he wanted for this Damort property; he then said when he told this to Mr. Harney, Mr. Harney replied that, "Don't worry about that. I have taken care of it." If this could have taken place, to what could he have referred in such a conversation?

Mr. HOPKINS. I have no idea. I didn't discuss the price with Mr. Webb at any time—I mean, discuss my appraisal with Mr. Webb at any time.

Mr. WRIGHT. Did you discuss it with Mr. Harney?

Mr. HOPKINS. My appraisal?

Mr. WRIGHT. Yes, sir.

Mr. HOPKINS. No, sir.

Mr. WRIGHT. Did you discuss the value of the Damort property at any time with Mr. Harney?

Mr. HOPKINS. No, sir.

Mr. WRIGHT. I would like to ask one question of Mr. Beasley.

Mr. Beasley, as an appraiser, do you say that the price the property previously brought the last time it was sold would be an important element in making an appraisal?

Mr. BEASLEY. Yes, sir. It is the practice, as far as our firm is concerned, to make as complete an abstract of each individual ownership as we possibly can.

We go back at least 5 years or more on each parcel of property as we examine it for appraisal purposes.

And the fact—the facts have been brought out here that this property was sold in estate, as the settlement of an estate and so forth, and was part of the facts that came to our attention as we analyzed the various properties going down this right-of-way.

We took that into consideration and we felt that it had substantial weight in consideration, especially since we had a lot of other economic information to compare with this specific fact.

And we always give careful consideration to it. I don't say it is a ruling element in the appraisal process. But when you deal en masse, these facts become quite important as you follow along, and the weighted average of information begins to reveal itself so that you do have a basis for a conclusion.

Mr. WRIGHT. I see. Thank you, Mr. Chairman.

Mr. KLUCZYNSKI. Mr. Gray?

Mr. GRAY. I have one question I would like to ask, Mr. Chairman. Mr. Hopkins, Mr. Joseph Schwartz testified here this morning that he had met you on one occasion.

He first said, I think, he did not remember it, and then on reflection back, he said he had met you in Boston. He said it was in a hotel.

You testified a little earlier this afternoon that you thought you met him in the right-of-way office. Is that correct?

Mr. HOPKINS. I met Mr. Schwartz in the right-of-way office, that is correct.

Mr. GRAY. He testified here earlier today that he met you in a downtown hotel casually some evening, having dinner or something to that effect.

The important point, and the reason I ask the question, at the meeting, whether it be in a hotel or the right-of-way office, did you discuss this Damort property?

Mr. HOPKINS. No, sir.

Mr. GRAY. You did not?

Mr. HOPKINS. No, sir.

Mr. GRAY. As you know, your appraisal was made before his—

Mr. HOPKINS. I don't know. I didn't know that.

Mr. GRAY. You did not discuss appraisals at all with him at this meeting?

Mr. HOPKINS. No, sir.

Mr. GRAY. Do you know what you did discuss with him at the right-of-way office?

Mr. HOPKINS. It was just more or less exchanging pleasantries——

Mr. GRAY. You are absolutely sure that it was at the right-of-way office?

Mr. HOPKINS. Yes, certainly.

Mr. GRAY. That is all.

Mr. KLUCZYNSKI. Mr. Wright.

Mr. WRIGHT. Mr. Hopkins, I believe a more specific reference to the record of the hearing shows that Mr. Harney was quoted as having said, "The man from Jamaica Plain would be taken care of."

Where do you live, Mr. Hopkins?

Mr. HOPKINS. I live in Jamaica Plain.

Mr. WRIGHT. Did Harney ever take care of you in any way or do anything for you?

Mr. HOPKINS. No, sir, I don't know what you mean.

Mr. WRIGHT. Did he make any threats?

Mr. HOPKINS. No, sir.

Mr. WRIGHT. Did he convey or make any allusions to the loss of your job, perhaps?

Mr. HOPKINS. No, sir.

Mr. WRIGHT. Thank you.

Mr. JONES. Mr. Chairman?

Mr. KLUCZYNSKI. Mr. Scherer.

Mr. SCHERER. A question to Mr. Beasley: Mr. Beasley, you said of the properties that you examined there were two of them in this area for which the State, in your opinion, paid approximately \$100,000 more than they were actually worth.

Did your investigation disclose what percentage of that excess \$100,000 was paid to attorneys or other persons involved in the transaction other than the owner?

Mr. BEASLEY. I would like to clarify the role that we have played in this matter, because I think this will answer your question.

We confined our work entirely to the field of real property analysis. The project examination division of the Bureau of Public Roads, under Mr. O'Connor's direction, followed through on the interrogation of the individuals involved, and we were actually instructed not to do such a thing. We confined our work to evaluations, so we have no knowledge of who got what.

Mr. SCHERER. You furnished the information to others and they were to decide, particularly with reference to this \$100,000 that I have been talking about, who participated in that \$100,000 excess?

Mr. BEASLEY. They have the answer, I think.

Mr. SCHERER. All right.

Mr. KLUCZYNSKI. The witness has discussed——

Mr. JONES. Mr. Chairman, may I ask one or two questions?

Mr. KLUCZYNSKI. Mr. Jones.

Mr. JONES. How long have you known Mr. Harney?

Mr. HOPKINS. Since November of 1959.

Mr. JONES. 1959?

Mr. HOPKINS. This meeting with Mr. Harney is when I met him on location.

Mr. JONES. And how long have you known Mr. O'Connell?

Mr. HOPKINS. I don't know Mr. O'Connell.

Mr. JONES. You don't know Mr. O'Connell?

Mr. HOPKINS. I never met him until the day of the trial in Boston.

Mr. JONES. Now, do you know Mr.—Mr. Cramer asked the question and it was whether or not you are a civil service employee or an employee within the confines of the State merit system, and I think you said that you didn't have a situation; you were just appointed for 6 months—

Mr. HOPKINS. For the last year I have been under civil service.

Mr. JONES. Now, do you know what position Mr. Harney had in the State, as far as his occupation was concerned? Was he a civil service employee?

Mr. HOPKINS. Yes.

Mr. JONES. He was?

Mr. HOPKINS. Yes.

Mr. JONES. And when was he appointed?

Mr. HOPKINS. You mean the first—when was he first appointed to the position?

Mr. JONES. Yes, sir.

Mr. HOPKINS. I have no knowledge of that.

Mr. JONES. And you were appointed when?

Mr. HOPKINS. Eight years ago, in 1954; January of 1954.

Mr. JONES. You were appointed to the State position, to your present position?

Mr. HOPKINS. The title is right-of-way negotiator, that's right.

Mr. JONES. And you have occupied that position since 1954?

Mr. HOPKINS. That's correct.

Mr. JONES. Thank you, sir.

Mr. KLUCZYNSKI. Thank you, Mr. Hopkins. The witness is dismissed. The Chair declares a recess for 5 minutes, sort of a seventh-inning stretch, and immediately after the recess, our first witness will be James S. O'Connell.

We will recess for 5 minutes.

(Brief recess.)

Mr. KLUCZYNSKI. The first witness will be James S. O'Connell.

Mr. O'Connell will you oblige by raising your right hand?

Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. O'Connell. I do.

TESTIMONY OF JAMES S. O'CONNELL, SCITUATE, MASS., ACCOMPANIED BY C. KEITH HURLEY, BOSTON, MASS., COUNSEL

Mr. KLUCZYNSKI. Will you kindly give your name and address and your occupation for the record, please?

Mr. HURLEY. Mr. Chairman—

Mr. KLUCZYNSKI. Or would you kindly give your name? Are you the attorney?

Mr. HURLEY. Yes, I am, sir. I am representing Mr. O'Connell.

Mr. KLUCZYNSKI. Will you kindly give your name?

Mr. HURLEY. My name is C. Keith Hurley, H-u-r-l-e-y, 60 State Street, Boston, Mass.

Mr. Chairman, may I make an inquiry of the subcommittee at this moment?

Mr. KLUCZYNSKI. Yes.

Mr. HURLEY. May I respectfully ask that the letter which I sent to Hon. John A. Blatnik, chairman, dated January 26, 1962, in which I advised the committee that Mr. O'Connell, among other things, is under indictment, and the reply to that letter, dated February 1, 1962, be made a part of the record of these proceedings?

Mr. KLUCZYNSKI. You sent the letter to the chairman, did you? May I have a copy of it, please, so I can show it to the members of the committee?

Mr. HURLEY. Yes, Your Honor.

Mr. SCHERER. Mr. Chairman, of course, we have not seen the letter. Could we have it read?

Mr. KLUCZYNSKI. Would you read it?

Mr. SCHERER. That is, so we will know what is in it.

Mr. KLUCZYNSKI. Just a moment. If it is read it becomes a part of the testimony, anyway, a part of the record.

Mr. JONES. Mr. Chairman, in view of the fact that the letter has not been formally presented to the committee and, consequently, the members of the subcommittee have not had an opportunity to examine it, I ask unanimous consent that the letter be taken up in executive session and we proceed with the examination of the witness at this time.

Mr. KLUCZYNSKI. Any objection?

Mr. SCHERER. That is the import of the letter. I read it hurriedly. The import is that counsel is objecting to the witness being called in view of the fact that he is under indictment.

So if we proceed with the interrogation it would be too late to act on the letter at a later date.

Mr. JONES. Well, I do not have that information from the letter and, consequently, my motion or my—

Mr. KLUCZYNSKI. Well, the motion is made that the letter be considered in executive session.

Any objections?

All those voting "aye" say "aye." [A chorus of "ayes."]

Mr. KLUCZYNSKI. Without objection, it will be taken up in executive session. Mr. May?

Mr. HURLEY. Mr. Chairman, may I at this point respectfully suggest, and request, that the rules of the committee be invoked on behalf of Mr. O'Connell as the rules were explained in Document No. 86-23, "Construction Projects of Oklahoma," which is a transcript of the hearings of this special subcommittee held on the dates of May 2, 3, 4, 5, and 6, 1960, wherein at page—

Mr. JONES. Will counsel state what those rules are? What page?

Mr. HURLEY. Yes, sir, at page 273.

Mr. JONES. All right. Will the clerk of the committee supply the members with the reference that he is making?

Mr. HURLEY. You want me to read it?

Mr. JONES. Well, let's get it so we will have it for the members, because our recollection sometimes is faint to various portions of it.

Now, what—

Mr. GRAY. What page was that, Mr. Chairman?

Mr. JONES. 273.

Well, what point did you expect to make?

Mr. HURLEY. The portion to which I have reference, Mr. Chairman, is very brief, and it starts where Mr. Cramer says:

Mr. Chairman, has the witness and his attorney been advised as to the rules of this committee and what his rights or privileges may be under the rules of the committee?

Mr. BLATNIK. Yes, he has.

Mr. CRAMER. Then would counsel make certain he has been so advised?

Repeat what the rules of the committee are concerning persons under indictment.

Mr. MAY. Yes, sir. It has been explained to Mr. Layman, and his counsel, that questions will not be asked of Mr. Layman regarding those areas under which or for which indictments have been issued.

On other areas questions will be put to Mr. Layman. He may answer or use his constitutional right, as he sees fit.

Now, Mr. Chairman—

Mr. JONES. Well, let me say to you, Mr. Counsel, that, of course, the Chair has no way to guard the right of any inquiry made by a member, notwithstanding the fact that he has read portions of a formal ruling of the chairman, that this Chair does not feel bound to adhere to.

So if there are questions that you think invade the constitutional rights of your client, then you can exercise whatever prerogatives or rights that you want to initiate before this committee.

And, certainly, the chairman cannot extend its ruling beyond that point.

I wish to say this: What I am saying to you is this, this is a legislative inquiry. It is not a judicial process in the sense that you have all the safeguards that you would have in a judicial proceeding, for the simple reason that all members have a right to make an extensive inquiry, which the chairman cannot gage nor could the Chair anticipate.

And for that reason I do not know of any ruling that could be made that would extend to the members that restriction. So for that reason, you will have to, Mr. Counsel, make any extenuation to your client as to whether the question should have an answer or not.

Mr. CRAMER. Mr. Chairman, I raise the point—

Mr. JONES. Mr. Scherer?

Mr. CRAMER (continuing). So far as I know, there is no question before the witness.

Mr. JONES. Well, I am just saying that he propounded—

Mr. CRAMER. There has been no question asked.

Mr. JONES. Yes, Mr. Scherer?

Mr. SCHERER. May I make this observation? It is my understanding and my feeling that if a question is asked of this witness, and his counsel feels that that would affect him adversely in the criminal litigation that is pending, then counsel or the witness should so state and we would desist from asking that question.

Mr. JONES. That is exactly what I have said.

Mr. SCHERER. Wait a minute. Let me finish. And we would not ask him or instruct him to answer the question and thereby force him to invoke the fifth amendment.

Mr. JONES. That is the precise situation which the Chair has tried to emphasize with counsel on any other question also, because the Chair could not anticipate what the questions will be.

Mr. HURLEY. I appreciate—

Mr. JONES. And, therefore, the area or the limit of the witness' testimony is to be governed by you, Mr. Counsel, and not by the members of this committee.

Mr. HURLEY. I appreciate very deeply what you have said and it points rather significantly at a very peculiar position in which Mr. O'Connell is.

Mr. JONES. Well, I will assure you this, Mr. Counsel: The Chair will try to protect and will give you every opportunity that can be afforded to your witness.

Mr. SCHERER. If I may—

Mr. HURLEY. May I call this to your attention—

Mr. JONES. And I am quite sure that I speak for all members of the Public Works Subcommittee because it is not the question of embarrassment.

The question is interrogation, so we can learn certain facts and information that might guide the destinies and deliberations of this committee. Nobody is seeking to visit injury upon your client.

Mr. SCHERER. Parliamentary inquiry?

Mr. JONES. Yes, Mr. Scherer.

Mr. SCHERER. Then do I understand that the Chair will rule that if a question is propounded to this witness and the witness, on advice of counsel, says that in his opinion he feels that the answer to that question would affect the witness adversely in the criminal proceeding now pending, that we will not pursue that question further and will not compel him to invoke the fifth amendment?

Mr. JONES. I will take that to be the most wholesome proposition that we have heard.

Mr. HURLEY. Very well, Your Honor.

Mr. JONES. And so, for that reason, I would hope that if there is any question directed to the situation under indictment, as I understand it, then we would afford you all of the guards and protection that you have anyway, and I think Mr. Scherer's suggestion is a wholesome situation for the committee.

Mr. HURLEY. I don't mean to impose, Mr. Chairman, and I don't want this committee to feel that I am technical or bickering, but, in light of the indictment pending against this client, and the appeal, and the possibility of its going back—the case going back for a new trial—and because one of the motions, one of the portions of the appeal, is based upon the vagueness of the indictment itself, I will have to advise my client and state to you, gentlemen, that it is my opinion that any question asked of this gentleman after the question which has just been put to him, as I understand it, "What is your name and where do you live," could affect adversely the future proceedings of the indictment pending against him.

Mr. SCHERER. May I ask counsel one question?

Mr. JONES. Yes.

Mr. SCHERER. What is the present status of the criminal proceeding?

Mr. HURLEY. The appeal has been docketed. The record will be perfected on the 12th of this month and it will be heard in the circuit court of appeals, presumably, the first Tuesday in April.

Mr. JONES. Now, I do not know, but, Mr. O'Connell, have you been properly identified to the subcommittee? Have you been sworn?

Mr. WRIGHT. He has been sworn in. He did not state his name.

Mr. JONES. And will you further identify yourself as counsel for—

Mr. HURLEY. My name is C. Keith Hurley.

Mr. JONES. Fairley?

Mr. HURLEY. Hurley, H-u-r-l-e-y. I am a senior partner in the law firm of Hale & Dorr, 60 State Street, Boston, Mass.

Mr. JONES. Now, Mr. Hurley, this is a very—Mr. O'Connell is a very important witness, in the whole investigation.

So I will give you all the time that will be required to speak out to your client in the answer of any questions. So I hope you will have the freedom of feeling that in this examination you will be able to present all of the facts that you think are necessary in rebuttal to a matter that has been placed before this committee.

Mr. CRAMER. Mr. Chairman—

Mr. JONES. Yes, Mr. Cramer?

Mr. CRAMER. May I ask counsel: your client and you have been advised, have you not, as to the contents of the indictment?

Mr. HURLEY. As to the contents of the indictment?

Mr. CRAMER. Yes.

Mr. HURLEY. I am quite familiar with them.

Mr. CRAMER. Well, what charge is he indicted on and what facts and circumstances are set out?

Mr. HURLEY. If it may please the committee, as counsel in this case, I feel that it would be most inappropriate and fringing possibly on contempt of court for me to publicly discuss a matter which is now pending before the Circuit Court of Appeals for the First Circuit.

Mr. JONES. Well—

Mr. CRAMER. The indictment—

Mr. JONES. Let me take this, Mr. Cramer.

Mr. Counsel, at this point the certified copy of the indictment against Mr. O'Connell will be made a part of the record.

Mr. HURLEY. Fine.

(The document referred to follows:)

UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

INDICTMENT — CRIMINAL NO. —

UNITED STATES OF AMERICA *v.* FRANCIS L. HARNEY, JR., CHARLES H. LAWTON, JR., AND JAMES S. O'CONNELL

The grand jury charges:

1. That at all times hereinafter mentioned, the Department of Public Works was a Department and Agency of the Commonwealth of Massachusetts, hereinafter designated as the Commonwealth, engaged in the construction and development of road systems within said Commonwealth, including the taking of land for such purposes.

2. That at all times hereinafter mentioned, the Department of Public Works was participating with The Bureau of Public Roads, United States Department of Commerce, in the aforesaid construction and development within the Federal Aid Highway System, which participation contemplated reimbursement to the Commonwealth by The Bureau of Public Roads of a substantial portion of the costs incurred, including acquisition of right of way.

3. That at all times hereinafter mentioned, the Real Estate Review Board of the Department of Public Works of said Commonwealth determined the maximum out-of-court settlement amount to be paid by the Commonwealth for parcels of land damaged as a result of takings for highway purposes by said Commonwealth.

4. That on or about May 8, 1959, the Commonwealth through the Department of Public Works, obtained the approval of The Bureau of Public Roads for a portion of Federal Aid Project No. 1-95-1(2)0, located in the City of (South) Attleboro within this District, a project within the Federal Aid Highway System pursuant to the Federal Aid Road Act (39 Stat. 35) as amended and supplemented. Said portion of said project included real estate owned by Damort Land Corporation, more particularly described below.

5. That at all times hereinafter mentioned Francis L. Harney, Jr., of Wellesley, Massachusetts, named as a defendant herein, was employed by the Commonwealth as a Negotiator in the Right of Way Division of the Department of Public Works and his duties in that position included the negotiation of land damage settlements and agreements with persons claiming damages resulting from the taking of their real property for highway purposes by the Commonwealth.

6. That at all times hereinafter mentioned James S. O'Connell of Scituate, Massachusetts, named as a defendant herein, was an attorney at law and a member of the Massachusetts Bar and in that capacity represented and purported to represent landowners in their claims against the Commonwealth for damages suffered or alleged to have been suffered to their respective parcels of real property in the taking of said real property by the Commonwealth for highway purposes.

7. At all times hereinafter mentioned Charles H. Lawton, Jr., of Pawtucket, Rhode Island, operated a real estate and brokerage firm in Pawtucket, under the firm name of C. H. Lawton & Son and, commencing about January 1957, was employed as agent for the management, rental, and sale of certain real property owned by the Damort Land Corporation, more particularly described below.

8. At all times hereinafter mentioned Felix J. Myette of Pawtucket, Rhode Island, named as a co-conspirator but not defendant herein, was employed by the firm of C. H. Lawton & Son and commencing about January 1957, was assigned by the defendant Lawton to aid in the management, rental, and sale of the said Damort Land Corporation property.

9. At all times hereinafter mentioned Errol G. Hopkins of Boston, Massachusetts, named as a co-conspirator but not defendant herein, was employed by the Commonwealth as an appraiser and negotiator in the Right of Way Division of the Department of Public Works.

10. At all times hereinafter mentioned, Ernest T. Collins of Swansea, Massachusetts, named as a co-conspirator but not defendant herein, was a real estate appraiser and from time to time was employed by the Department of Public Works of the Commonwealth to make independent appraisals of real property taken by the Commonwealth by eminent domain.

11. At all times hereinafter mentioned, Joseph L. Schwartz of Fall River, Massachusetts, named as a co-conspirator but not defendant herein, was engaged in the lumber business and from time to time was employed by the Department of Public Works of the Commonwealth to make independent appraisals of real property taken by the Commonwealth by eminent domain.

12. At all times hereinafter mentioned, Walter M. Webb of Lynnfield, Massachusetts, named as a co-conspirator but not defendant herein, was engaged in the lumber business and in connection therewith was the principal officer of Damort Land Corporation, a corporation organized under the laws of Massachusetts which owned real estate in South Attleboro, Massachusetts, with buildings thereon including a lumber warehouse. Said Webb had purchased 50 percent of the capital stock of Damort Land Corporation on or about February 9, 1956, and on or about April 18, 1957, he purchased the remaining 50 percent of the capital stock of said corporation, becoming its sole stockholder and remaining its sole stockholder at all times hereinafter mentioned.

13. The real estate described in the previous paragraph was located on the northwesterly corner of Turner and Allen Streets in Attleboro and had been purchased by Damort Land Corporation on or about February 8, 1956, from the Industrial National Bank of Providence, Rhode Island, Executor, for \$20,000. Damort Land Corporation continued to own said real estate until August 10, 1959, the date when all but a small part was taken by the Commonwealth. No improvements were made to said real property while owned by said corporation. The real property of said corporation was taken by the Commonwealth as Parcels Nos. 105, 105A, 105B, TS-119 included in the Department of Public Works' Layout No. 4877.

14. On or about January 21, 1960, the Real Estate Review Board of the Department of Public Works of the Commonwealth considered the Damort Land

Corporation taking for the purpose of determining the maximum out-of-court settlement figure which might be paid by the Commonwealth for the land damage resulting from said taking on the basis of the following appraisals:

co-conspirator Erroll Hopkins.....	\$54,000
co-conspirator Ernest T. Collins.....	65,000
co-conspirator Joseph T. Schwartz.....	67,000

It concluded that it would make no determination on that day and requested an additional independent appraisal.

15. On or about February 20, 1960, said Real Estate Review Board again considered the Damort Land Corporation taking, having received in the interim an appraisal by the defendant Charles H. Lawton, Jr., of the damages to said real property at \$60,000 and, on the basis of the four appraisals then before it, concluded that the maximum out-of-court settlement which might be paid by the Commonwealth for the land damage suffered by Damort Land Corporation by reason of the taking of its real property was \$60,000.

16. Commencing on or before May 27, 1959, and continuing until the date of this indictment, at the City of Attleboro and the City of Boston in the District of Massachusetts and at other places unknown to the grand jury, defendants Francis J. Harney, Jr., James S. O'Connell, and Charles H. Lawton, Jr., did unlawfully, willfully, and knowingly, and fraudulently combine, conspire, confederate, and agree among themselves and with coconspirators Walter M. Webb, Felix J. Myette, Errol G. Hopkins, Ernest T. Collins, and Joseph L. Schwartz, named herein as coconspirators but not defendants, and with other persons to the grand jury unknown to defraud the United States of America and an agency thereof, namely, the Bureau of Public Roads of the Department of Commerce; that is to say, having knowledge that the Commonwealth would apply for and receive payments from said agency under the Federal Aid Road Act, as amended and supplemented, which payments would constitute partial reimbursement to the Commonwealth for damages paid by it to claimants in the taking of their real property for highway purposes as well as partial reimbursement for payment of salaries and fees paid to appraisers and negotiators employed by the Commonwealth in connection with said takings of real property, said defendants and coconspirators did combine, conspire, confederate, and agree (a) to hamper, hinder, obstruct, and impede the lawful functions, operations, and purposes of said Bureau of Public Roads of the Department of Commerce in the administration of the Federal Aid Highway program by impeding and preventing by craft, trickery, and deceit a fair, honest, and disinterested valuation and negotiation of damages resulting from the taking by the Commonwealth of the real property owned by Damort Land Corporation; (b) to divert or cause to be diverted to the personal use, gain and benefit of one or more of the defendants and coconspirators a large portion of the money paid by the Commonwealth to Damort Land Corporation in payment for the real estate taken from said corporation, the share of said payment reimbursable by said agency of the United States being ninety percent, contrary to and in derogation of the purpose and intent of the Commonwealth in making the said payment and contrary to and in derogation of the purposes and intent of the Federal Aid Highway program and (c) to cause the Commonwealth to pay to Damort Land Corporation in payment for the real estate taken from said corporation an amount of money far in excess of the sum which the said owner demanded and was willing to receive in full payment of its claim, all in violation of Title 18, United States Code, section 371.

17. It was part of said conspiracy that defendant Harney and coconspirator Myette would induce coconspirator Webb to employ defendant O'Connell to represent Damort Land Corporation in its claim for land damages against the Commonwealth.

18. It was a further part of said conspiracy that defendant O'Connell would hold himself out to the Commonwealth as attorney at law for Damort Land Corporation in its claim for land damages against the Commonwealth.

19. It was a further part of said conspiracy that coconspirator Hopkins would, in December 1959, submit to the Department of Public Works of the Commonwealth an appraisal of the damages to the real property of Damort Land Corporation higher than said corporation through coconspirator Webb had demanded and agreed to accept.

20. It was a further part of said conspiracy that coconspirators Collins and Schwartz would be appointed independent appraisers replacing two others previously selected and would, in December 1959, each submit to the Department of

Public Works of the Commonwealth an independent appraisal of the damages to the real property of Damort Land Corporation higher than said corporation through coconspirator Webb had demanded and agreed to accept.

21. It was a further part of said conspiracy that the defendant Lawton would be appointed as the additional independent appraiser requested by the Real Estate Review Board of the Department of Public Works and would, in February 1960, submit to the Department of Public Works of the Commonwealth an appraisal of the damages to the real property of the Damort Land Corporation higher than said corporation through coconspirator Webb had demanded and agreed to accept; and further that defendant Lawton would falsely certify in his appraisal that he had no interest, past, present, or future, in said real property.

22. It was a further part of said conspiracy that, upon payment to Damort Land Corporation by the Commonwealth of the amount of \$60,000 plus tax apportionment, defendant O'Connell would divert \$30,000 of said sum to his own use.

23. It was a further part of said conspiracy that, upon payment to Damort Land Corporation by the Commonwealth of the amount of \$60,000 plus tax apportionment, defendant Lawton and coconspirator Myette would divert \$1,500 of said sum to their own use.

24. It was a further part of said conspiracy that defendants Harney, Lawton, and O'Connell and coconspirators Myette and Webb would conceal from the Commonwealth and from the United States that Damort Land Corporation through coconspirator Webb had demanded and agreed to accept \$30,000 as full damages for the said taking.

25. It was a further part of said conspiracy that defendant Lawton and coconspirators Myette and Webb would meet and together deliberately remove from the files of said Webb various documents pertaining to the Damort Land Corporation real property and destroy them for the purpose of concealing their contents.

OVERT ACTS

In furtherance of the aforesaid conspiracy during its continuance and in order to effect the objects thereof, the defendants and coconspirators did commit, among others, the following overt acts:

1. On or about May 27, 1959, defendant Harney, acting in his capacity as Negotiator in the Right-of-Way Division of the Department of Public Works of the Commonwealth of Massachusetts, met with coconspirator Myette.

2. On or about June 3, 1960, defendant Harney met with defendant Lawton and coconspirator Myette.

3. On or about July 8, 1959, coconspirator Myette and defendant Lawton met with defendant O'Connell.

4. By letter dated July 8, 1959, defendant O'Connell notified the Department of Public Works of the Commonwealth that he represented Damort Land Corporation with respect to its claim for damages.

6. On or about November 20, 1959, coconspirator Hopkins telephoned coconspirator Webb and had a conversation with him.

7. On or about November 20, 1959, coconspirator Webb mailed a certain letter to defendant O'Connell.

8. On or about December 28, 1959, coconspirator Schwartz submitted to the Department of Public Works of the Commonwealth his appraisal of the damages to said real property.

9. On or about February 13, 1960, defendant Lawton submitted to the Department of Public Works of the Commonwealth an appraisal of \$60,000 as the damages to said real property.

10. On or about April 4, 1960, coconspirator Webb at the law office of defendant O'Connell and in the presence of defendant Harney endorsed a check of the Commonwealth in the amount of \$47,383.37.

11. Defendant O'Connell wrote a check dated April 8, 1960, payable to Damort Land Corporation in the amount of \$17,383.37.

12. Soon after April 8, 1960, coconspirator Webb paid to C. H. Lawton & Son the sum of \$1,500.

13. On or about December 6, 1960, defendant Harney met with coconspirator Myette at the latter's home.

Mr. JONES. So, therefore——

Mr. CRAMER. Where is it?

Mr. JONES (continuing). There cannot be any question about it. We will have to get the indictment if counsel fails to supply us with one.

Mr. CRAMER. Mr. Chairman, the reason I asked the contents of the indictment is that I understand the ruling of the Chair, or as I understand the ruling of the Chair, the right of the witness runs to the subject matter covered in the indictment and not outside of that, and the committee has a right to ask him any questions they want to outside of the subject matter contained in the indictment itself.

Now, how can we ask questions if we do not know what the indictment contains?

Mr. JONES. I agree with the gentleman from Florida. I see no reason for failure to disclose the contents of the indictment. They are a matter of public record. They have been publicized.

I see no reason why counsel would insist on failing to disclose what is in the indictment.

Mr. HURLEY. Counsel is not failing to disclose what is in the indictment. I do not have a copy with me, but it certainly is a public record. All I am saying is that I should not discuss it.

Mr. JONES. It is not a question of discussing it. The question was propounded to you, Counsel, by Mr. Cramer of Florida, which says, "What were you indicted for; what is the indictment?"

Mr. HURLEY. Well, the indictment is about 10 pages long, and I am sure I couldn't remember it.

Mr. JONES. In substance, what are the principal counts in the indictment?

Mr. HURLEY. Conspiracy. That is the indictment.

Mr. JONES. And the conspiracy is alleged by the indictment as conspiring against whom?

Mr. HURLEY. To defraud the United States.

Mr. JONES. All right. And, as a result of that proceeding, the only indictment your client was convicted on was in the Federal district court. Is that correct?

Mr. HURLEY. My client pleaded not guilty to the indictment, was tried, beginning October 24, and was convicted. And judgment was entered and an appeal has been taken.

Mr. JONES. And what was the order of judgment? What was the order of judgment?

Mr. HURLEY. One year.

Mr. JONES. I mean, we can go out here and get all of this—

Mr. HURLEY. One year. There is no reason at all why you can't.

Mr. JONES. What?

Mr. HURLEY. It was 1 year. And there is no reason at all why you can't. It is a matter of public record.

Mr. CRAMER. Well, there is no reason why you should not indicate then what the Chair asked.

Mr. HURLEY. One year, as I understand it, and \$5,000 fine.

Mr. CRAMER. Is it or is it not true that the subject matter of the public trial, which flowed from the indictment, was the Damort land taking?

Mr. HURLEY. That was one.

Mr. CRAMER. What else?

Mr. HURLEY. There were other things mentioned or attempted to be brought into evidence, excluded——

Mr. CRAMER. That is what the indictment covered, though, was it not, the Damort land taking?

Mr. HURLEY. That is what it said in the indictment.

Mr. CRAMER. All right.

Mr. HURLEY. The evidence covered other things.

Mr. CRAMER. That establishes exactly the point I was making. He has a right to exercise his rights relative to the Damort land taking.

Mr. HURLEY. I disagree with you.

Mr. CRAMER. And such other matters that you may feel affect that particular matter.

Mr. JONES. In order that the committee be fully informed of the indictment, and since it has such a pertinence and relevancy here, then that indictment will be made a part of the record at this point or the point immediately after the question raised by Mr. Cramer.

Mr. JONES. Mr. Wright.

Mr. WRIGHT. Mr. Chairman, I think you have arrived at the conclusion which I would suggest in connection with the precedent that we had in the *Layman* case before this committee.

One reference has already been made in which counsel for the committee said it had been explained to Mr. Layman and his counsel, as follows:

That question will not be asked of Mr. Layman regarding those areas under which or for which indictment has been issued. On other areas questions will be put to Mr. Layman; he may answer or use his constitutional right, as he sees fit.

Then the question was asked by Mr. Cramer:

When a specific question is asked Mr. Layman, who is to judge, as far as whether the answer is to be given or not, as to whether or not the question relates to the indictment?

Mr. May replied:

Of course, it will have to be Mr. Layman.

Now, concerning the attempt of counsel for the witness, it seems he is making entirely too broad an interpretation by reference to the alleged vagueness of the indictment, and for him to insinuate that any question asked in this hearing might tend to prejudice his client's case, I think, obviously, is too broad.

I think the questions will have to be put and then it will be up to the witness or his counsel to determine, as each question is put, whether or not it relates directly to the matter covered in the indictment.

And——

Mr. JONES. Well, the Chair has tried to explain that to counsel and tried to repeat that aim, Mr. Wright. That was the purpose.

And, furthermore, counsel knows that any question that would incriminate the witness would automatically fall in that category of the fifth amendment.

And so I just think that the best procedure would be to proceed, and if counsel has objections to the questions, let him state them to the Chair. And if there is insistence by a member of the committee he can pursue it to its ultimate end.

And I will say that because that would give latitude to counsel for Mr. O'Connell for ample opportunity to safeguard his client's interests, and it would not be—the Chair could not insist that a member of

the committee could not pursue any question that he wanted to on an answer of the fifth amendment.

So I wanted to keep both interests alive, as far as counsel is concerned and as far as the members are concerned.

Now, I think, Mr. Counsel, you understand what I have said?

Mr. HURLEY. I certainly understand what you have said, Mr. Chairman, but—

Mr. JONES. Well, the Chair will try to abide by what he stated.

Mr. SCHERER. I do not want to belabor the point.

Mr. JONES. Yes?

Mr. SCHERER. But what concerns me at this point is that the committee, in its questioning, does not do anything to help reverse the conviction that has been obtained in the State of Massachusetts. That is what bothers me.

Mr. JONES. Well, I do not think—

Mr. SCHERER. I think—

Mr. JONES. I do not think—

Mr. SCHERER. Not intentionally, of course.

Mr. JONES. Well, our business is that we are, in effect, a factfinding body, and do not operate in a judicial determination.

Mr. BASS. Mr. Chairman?

Mr. JONES. And those things we cannot calculate over and beyond what this committee's duties are. That is something that I do not know anything about and I do not want to speculate on it, and I do not think it is fruitful for us to inject ourselves into those matters.

Now, another question—Mr. Baldwin—Mr. Bass?

Mr. BASS. I would like to ask counsel was there more than one count in the indictment?

Mr. HURLEY. No.

Mr. BASS. One count?

Mr. HURLEY. One count.

Mr. BASS. And the defendant was found guilty on that one count?

Mr. HURLEY. That's right.

Mr. JONES. Now—

Mr. HURLEY. Mr. Chairman?

Mr. JONES. Is there any other question that members would like to propound to the Chair? And thank you for the great help you have rendered so far.

Mr. COOK. Mr. Chairman?

Mr. JONES. Yes, Mr. Cook?

Mr. COOK. It is my understanding that if the fifth amendment is taken on any particular question, it must be taken by the witness himself. Is that not correct?

Mr. JONES. No, I think counsel has that—

Mr. COOK. Is it not counsel's role simply to advise the witness?

Mr. JONES. Well, I would think that it would be a time-saving device. Of course—

Mr. CRAMER. As I understand the procedure, counsel can advise his client, but the client has to exercise whatever his rights are.

He has to do his own pleading. Counsel cannot plead for him, no more than he can answer questions for him.

Mr. JONES. Well, I was—

Mr. CRAMER. I think that is what the chairman meant.

Mr. JONES. No, I meant it in a little bit different way. I was trying to say that we were going to leave the counsel in the position to say that if he felt the question was going to provoke or invoke the fifth amendment, then there would be no need of the witness taking that fifth amendment.

Now, if the members want to, as I said, if the members want the witness to invoke the fifth amendment, then that is within——

Mr. CRAMER. Well, Mr. Chairman, that is not the issue. The issue is that if the witness has the right, the right being that he is exercising the right to prevent prejudice in his pending case, that he has to assert that right in whatever form he sees fit.

And the Chair has to decide if that form thus does not necessitate his answering the question.

Mr. JONES. Yes, I agree with you, Mr. Cramer, 100 percent. I just hoped to avoid that. Now, Mr. May.

Mr. MAY. Mr. O'Connell, would you identify yourself for the record, please?

Mr. O'CONNELL. James S. O'Connell.

Mr. MAY. Where do you reside, Mr. O'Connell?

Mr. O'CONNELL. Twenty-seven Pheasant Hill Drive, Scituate, Mass.

Mr. MAY. Are you an attorney, admitted to practice law in the Commonwealth of Massachusetts?

Mr. O'CONNELL. Yes, I am.

Mr. MAY. Acting in that capacity, did there come a time when you were retained by one Charles Logan?

Mr. HURLEY. Are you through? We have——

Mr. MAY (continuing). To represent Mr. Logan in a land taking?

Mr. HURLEY. We have reached that point, gentlemen, and in answer——

Mr. COOK. Mr. Chairman, I object to counsel raising this question. I think the witness should be required to answer and take the fifth amendment, if he so sees fit.

Mr. SCHERER. Wait a minute. As I understand it, Mr. Cook, if the witness or counsel decided that the question would affect him adversely in the criminal prosecution in the State of Massachusetts, he would have the right to say so, and that then we would not press the question further so that he would have to invoke the fifth amendment for his refusal to answer. I understand that was the ruling of the Chair.

Mr. HURLEY. That is what I understood.

Mr. COOK. That counsel has that right, too?

Mr. SCHERER. Well, counsel has a right to advise the witness.

Mr. COOK. Yes, counsel has a right to advise the witness.

Mr. WRIGHT (presiding). In order that the procedures may be clearly understood, and the ruling of the Chair as previously occupied may be carried out, we will follow this procedure:

Counsel may advise his client and then the client will be called upon to respond to the question. The counsel is now in the process of advising his client, and will counsel please repeat the advice he is giving to his client?

Mr. HURLEY. I advised my client that to answer the question which has been put to him could prejudice and jeopardize his position in the litigation in which he is now engaged.

Mr. WRIGHT. And on that basis, does the client decline to answer the question?

Mr. O'CONNELL. I decline to answer the question.

Mr. CRAMER. On what basis?

Mr. O'CONNELL. On the advice of counsel.

Mr. WRIGHT. Under the previous ruling of the Chair, I think we must let that answer stand. Mr. May.

Mr. MAY. Mr. O'Connell, did there come a time when you received a visit from a Mr. Fred M. Roddy in connection with a taking by the Commonwealth of his property?

Mr. HURLEY. I advise my client in the same fashion with reference to that question.

Mr. WRIGHT. Would you state the basis upon which you are advising your client, Mr. Hurley?

Mr. HURLEY. Well, Mr. Chairman, it is our opinion that there are no other areas such as were referred to by Mr. May, when explaining the rule of this committee, at page 273, which I previously referred to.

In other words, because of the peculiar circumstances here involved, there are no other areas to be inquired of. I am, of course, at a distinct disadvantage because I consider myself under a disability to comment on the legal and factual basis of the Government's case and the merits of the appeal.

To do so would be to violate my duty to the circuit court of appeals, a court of which I am a member, and for which I have the utmost respect.

However, I do consider it appropriate to state that one of the grounds of the appeal is the vagueness of the indictment itself, and its failure to adequately and fairly apprise Mr. O'Connell of the offense or offenses of which he is charged.

For example, matters which the Boston newspapers have reported earlier this week as being subjects of inquiry at this hearing and which have nothing to do with the real estate of the Damort Land Corp., were offered in evidence by the Government at the trial of the indictment.

The matters were excluded by the district court at the trial; however, there is no present assurance that the scope of the indictment is irrevocably thus limited by those rulings of the trial judge—of that trial judge.

One action, one course of action which is open to the court of appeals is to reverse the conviction and send the case back for a new trial upon the same indictment. We have great confidence that that will take place.

Although I am of the opinion that the rulings of the trial judge in this regard were correct, it would be presumptuous, and improper, for me to represent to you that the trial court at a new trial would again limit the scope of the indictment by the same or similar rulings on the admissibility of evidence.

For this reason, Mr. Chairman, and gentlemen, I respectfully submit that the rule of this committee, to which I have referred, should be applied and that Mr. O'Connell should be asked no questions, no further questions, since there is no area pertinent to the inquiry which it can safely be said at this time does not relate to the indictment under which he remains in jeopardy.

Mr. JOHNSON. Mr. Chairman?

Mr. WRIGHT. May we proceed? After having heard the response of counsel, he having advised his client not to answer the question

which was just propounded, in pursuit of that, may we receive from the witness his statement as to whether he declines to answer that question?

Mr. O'CONNELL. I decline to answer the question.

Mr. WRIGHT. Now, in response to counsel, the Chair feels that in fairness to the witness and in fairness to the judicial proceeding on which an appeal has been taken, hopefully looking toward a new trial, there appears to be much of legal merit in what counsel has stated.

However, in keeping with the previous ruling of the Chair, the present occupant of the Chair is going to suggest that counsel for the committee pose such other questions as he may desire to pose at this time on the ground that it is presumptuous for either the committee or counsel for the witness to assume so broadly that any question we might ask would impinge upon the matter relating to the indictment or the pending legal proceeding.

Therefore, the Chair is going to ask the counsel for the committee to proceed with the questioning and within the limits of the ability of the Chair to respect the rights of the witness, I shall say that we will try to do so in maximum fairness to the committee and with as little prejudice to the legal rights of the witness as we can. Mr. May?

Mr. COOK. Point of order, Mr. Chairman.

Do I understand, as of the time these questions are asked, that counsel may answer as he has just immediately done preceding—

Mr. WRIGHT. It is hoped by the Chair not at such a great length, but that the counsel may advise his client and the client will answer under the rules of the committee.

Mr. COOK. But the client himself will answer?

Mr. WRIGHT. The client himself is being required to answer or to decline to answer.

Mr. COOK. On page 274 of the proceedings in our Oklahoma hearings this is exactly what was done.

The client himself answered the questions upon advice from counsel, perhaps, but counsel did not testify for the witness. But—

Mr. WRIGHT. May the Chair suggest that the responses in direct answer to counsel for the committee be made by the witness and, if he desires, he may say "upon advice of counsel I decline to answer that question on the same ground stated in my previous declination."

Mr. MAY. Mr. Chairman, in view of Mr. O'Connell's position at this time, I have no further questions.

Mr. WRIGHT. Does any member of the committee have further questions to propound at this time to this witness?

Mr. CRAMER. Do I understand, Mr. Chairman, that the witness is declining with regard to the last question relative to the Roddy property?

Mr. WRIGHT. It is the understanding of the Chair that he is.

Mr. CRAMER. As I understand it, the indictment relates to the Damort taking.

I understand he is invoking the same right in this instance as well, relative to this question as well?

Is that right?

Mr. O'CONNELL. (Nodding affirmatively.)

Mr. JOHNSON. Mr. Chairman, that was not my understanding.

The Chairman, at the time this was discussed, was going to confine the questions that might involve the Damort case and the indictment, and any other questions would be asked by counsel and members of the committee.

Now, Mr. O'Connell has been subpoenaed here as a witness. He has his right to counsel the same as these other witnesses have had.

I see no reason why the questions should not be put to Mr. O'Connell, and Mr. O'Connell have to answer those questions after he receives his advice of counsel. If he does not want to, that is his right.

Mr. WRIGHT. The Chair may stipulate that this is precisely what has been happening, Mr. Johnson.

The questions have been put to the witness and, upon the advice of his counsel, he has declined thus far to answer them. Counsel for the committee states that he has no further questions at this moment.

If the gentleman from California desires to pose a question to the witness he is at liberty to do so.

Mr. CRAMER. Mr. Chairman—excuse me.

Mr. JOHNSON. As I understood it, the counsel had a good many questions to ask of Mr. O'Connell.

Now, if you want to take the advice of his counsel, put in the record there or spoken into the record, that he is not going to answer any questions, naturally, that is all right. Now, is that the position of our counsel on this committee?

Mr. MAY. May I answer, Congressman?

Mr. WRIGHT. Mr. May?

Mr. MAY. So that I understand clearly, Mr. O'Connell, this is the situation:

During the trial of this matter up in Boston, the court did not allow evidence which might concern a pattern, a course of conduct.

In the event that you were upheld in an appeal, and this matter eventually went to another trial, the possibility does exist that the court at that time might allow evidence which has to do with pattern. Is that right, Mr. O'Connell?

Mr. O'CONNELL. Yes.

Mr. MAY. Now, if I were to put additional questions at this point to Mr. O'Connell based on the testimony that we have heard at these hearings up to this point, they would necessarily involve a pattern and a course of conduct.

And, Congressman, my position at this time is that due to the position of Mr. O'Connell, I have no further questions.

Mr. WRIGHT. Does any other member have any questions to propound to the witness at this time?

Mr. CRAMER. Mr. Chairman?

Mr. WRIGHT. Members on the right?

Mr. GRAY. Parliamentary inquiry. Do I understand the reason this witness has declined to answer is on the grounds that it might incriminate him? Is that the reason?

Mr. SCHERER. No, on the ground that it might adversely affect him in his appeal or in a new trial, should it be granted.

Mr. GRAY. Well, I think the rules of this committee, or, under the rules of this committee, that is the only valid grounds that he can decline to answer on, that it might tend to incriminate him.

Mr. WRIGHT. Let the Chair state that litigation is pending. Litigation concerning the matters on which the witness was indicted and later convicted, is now pending in the appellate courts.

Under the precedent established in the case previously referred to, the committee has taken a position, and the Chair believes properly, that a witness has the privilege of declining to answer on questions regarding those areas under which or for which indictments have been issued.

It is not the prerogative of the Chair to question the judgment of the witness, but it is the desire and inclination and disposition of the Chair to give to each member of this committee such opportunity as he may desire to propound further or additional questions to the witness.

The witness then, upon advice of his attorney or otherwise, would be expected to respond, either to answer them or to decline to answer them and if declining, to give his reasons for declining. Now, are there any questions on my right? Are there any questions on my left? Mr. Cramer?

Mr. CRAMER. Mr. Chairman, in that counsel has cited a precedent in a previous hearing, I would hope that the record of this is clear enough so that a future counsel for a future witness will know what the committee's position, at least at this time, is which does not necessarily confine a committee at a future time.

And, as I understand it, and to try to help clarify that record, the committee counsel has taken the position, and the Chair has ruled, that the witness, on the basis of the indictment, has a right to refuse to answer on the grounds that that indictment or that case is pending and, in effect, it might prejudice that case.

But it is also my understanding that that right which is being granted by the committee to him in that respect is limited solely to the subject matter contained in the indictment.

Mr. WRIGHT. Or to subject matter which might reasonably be expected to be adduced in a retrial of the case if another trial should be granted.

Mr. CRAMER. Now, that is where we get into some difficulty.

Taking a hypothetical case, if this witness were indicated in the *Charpentier* case, as well as the *Damort* case, the court having ruled that the evidence in *Charpentier* or such other cases cannot be used to show a pattern as it relates to the *Damort* indictment which is the pending matter, then why is this committee bound not to inquire into the Roddy matter or the *Charpentier* or other matters?

This, of course, is a question of discretion on the part of the chairman and counsel as to whether there is any relationship at all between those cases from a criminal standpoint, or a prosecution standpoint as it relates to *Damort*.

Now, there is the area in which the Chair has a discretion. Counsel has discretion. And the question asked was relating to the Roddy property.

Mr. WRIGHT. The Chair believes the gentleman's point is very well taken. The Chair is conscious, and somewhat painfully so, of the fact that it exercises discretion in this matter and that the decisions will form precedents.

The Chair tried to make it clear that it was not attempting to establish any precedent so broad as to permit the refusal summarily on the

part of the witness or counsel to answer a question which could reasonably be expected to be outside the area of legal proceedings now pending.

The Chair, therefore, is giving to the members of the committee, as well as to the counsel, the opportunity to propound such questions as they individually may see fit and, as they individually are asked and the witness responds, at that time the discretion will be exercised, and the Chair trusts prudently—

Mr. CRAMER. Mr. Chairman, I have a question.

Mr. WRIGHT (continuing). In a determination of whether or not they would reasonably be expected to impinge upon matters relating to the judicial process now pending. Mr. Cramer.

Mr. CRAMER. I have a question for the witness.

I have a question in that I think it is obviously—obvious that the committee cannot take properly the position that because a man is indicted for robbery—or murder—that he can plead that he does not have to answer questions relative to a robbery.

Mr. WRIGHT. Precisely. In this case the witness was indicted for conspiracy to defraud.

Mr. CRAMER. In the *Damort* case.

Mr. WRIGHT. Conspiracy to defraud the U.S. Government. The Chair is not intimately familiar with the counts of the indictment and, perhaps, would be better advised if he were.

Mr. CRAMER. Well, now, counsel stated on behalf, as I recall, of the witness that he was indicted on subject matter relating solely to the *Damort* case.

Mr. HURLEY. I did not so state.

Mr. CRAMER. What did you state?

Mr. HURLEY. I said the word “*Damort*” was used in the indictment and he is charged with conspiracy under the Federal laws.

Mr. COOK. Mr. Chairman?

Mr. HURLEY. Look at paragraph 16, Mr. Cramer.

Mr. COOK. Mr. Chairman, any evidence of other activities of this defendant that might show a pattern, as pointed out by counsel, I would say would be proper, of course, for him to object to on that basis.

However, what assurance do we have at this time that every transaction which the counsel might inquire of the defendant tends to show a criminal pattern? I do not see that that necessarily follows.

Mr. HURLEY. Similarly, I have no assurance that the contrary isn't so.

Mr. WRIGHT. However, may the chairman interpolate this point that the witness would certainly be expected to know whether or not a transaction, in which he might have engaged completely outside the realm covered in the indictment, would or would not be expected to show a pattern of conspiracy.

And for that reason the Chair has expressly refused to accept the broad and blanket request of counsel for the witness that the committee refrain from asking any questions whatsoever.

Mr. CRAMER. Mr. Chairman, I have a copy of the indictment.

August 24, 1961, it was received by this committee. *The United States of America v. Francis L. Harney, Jr., Charles H. Lawton, Jr., and James S. O'Connell.*

An examination of the—I presume, Counsel, you have examined this indictment, have you not?

MR. HURLEY. If that is a copy of it, I certainly have.

MR. CRAMER. Well, you do not question but what this is a copy of it, do you? Do you want to examine it?

MR. HURLEY. No, I don't want to examine it, if you say it is a copy.

MR. CRAMER. Let him examine it and let's establish it.

MR. CHAIRMAN?

MR. WRIGHT. Mr. Cramer.

MR. CRAMER. You have examined this document and this is a true copy of it?

MR. HURLEY. I have looked at it and it appears to be a copy of the indictment.

MR. CRAMER. Of the indictment?

MR. HURLEY. Yes, sir.

MR. CRAMER. I would like, Mr. Chairman, to make this part of the record at this point.

MR. WRIGHT. Is there objection to making a copy of the indictment an exhibit in the record at this point?

There being no objection, it is so ordered and this document will be exhibit No. 18.

(The document mentioned above was marked "Exhibit No. 18" and will be found in the files of the committee, the text of it having been previously inserted in the record.)

MR. CRAMER. Now, Mr. Counsel, this indictment refers, in paragraph 12, where the subject matter of the conspiracy is first discussed, to the Damort Land Corp.

Paragraph 13, the Damort Land Corp.; paragraph 14, the Damort Land Corp.; paragraph 15, the Damort Land Corp. taking.

Paragraph 16 sets out the count on the conspiracy itself; paragraph 17, the Damort Land Corp.; 18, Damort Land Corp.; paragraph 19, Damort Land Corp.; 20, the Damort Land Corp.; 21, Damort Land Corp.; 22, Damort Land Corp.; 23, the same; 24, the same; 25, the same.

In each instance it is restricting the indictment to the Damort Land Corp. taking.

Now, the question I wish to ask of the witness is: Were you approached by Mr. Roddy to be counsel for him in the taking of his property?

MR. O'CONNELL. I respectfully decline to answer on the same grounds, Mr. Cramer.

MR. COOK. What grounds?

MR. CRAMER. I ask the Chair to rule on the question.

MR. WRIGHT. And now the witness declines to answer on the grounds—

MR. O'CONNELL. On the advice of my counsel.

MR. WRIGHT. Upon the advice of counsel, to the effect that his answer to the question, relating to the Roddy property, might adversely affect a retrial in the event a retrial were granted.

MR. COOK. Mr. Chairman?

MR. WRIGHT. Mr. Cook.

MR. COOK. There is a point of order here.

This is the basis for refusing to answer the question or not? Why cannot the witness tell us the basis for his refusing to answer the question propounded by Mr. Cramer?

MR. WRIGHT. The Chair is trying to adduce from the witness what the basis is, and the Chair has asked the question:

Is that the basis on which the witness declines to answer?

MR. O'CONNELL. Yes, Mr. Chairman, you stated it right.

MR. BASS. What is it, Mr. Witness?

MR. WRIGHT. Will the witness himself state the basis for his declination to answer?

MR. O'CONNELL. That it is—I decline to answer because I feel that it would jeopardize a further trial or a retrial, if we are fortunate enough to obtain it.

MR. GRAY. Mr. Chairman, I think a point of order comes up here. There is only one basis that this witness has in declining and that is on the grounds that it may tend to incriminate him. I do not think there is any other privilege that he may assert.

MR. WRIGHT. May the chairman observe that the precedents of the committee are that the witness may decline to answer a question if it relates to the basis of the indictment.

The Chair has broadened this to interpret it so that he may decline if it relates to, and adversely affects him under the judicial process now pending.

The Chair, without knowing more of the circumstances involved, would be extremely presumptuous to state whether or not the answer which the witness might give would, in effect, adversely affect him or tend to incriminate him.

The Chair would observe that if the witness were sure of the probity of his actions with regard to the *Roddy* case he probably would have no hesitation to answer the question, but the Chair is attempting to conduct the hearing with respect for the rights of the witness and with respect for judicial processes.

The witness has been asked the question and has declined to answer and has given his reason for declining. Now, if one of the members of the committee desires to ask further questions with respect to this, he is at liberty to do so.

And the gentleman from Florida apparently has a question.

MR. CRAMER. Mr. Chairman, yes. Mr. Witness, were you indicted on the Roddy land taking as a part of this conspiracy?

MR. O'CONNELL. I decline to answer that question because it would tend to jeopardize my appeal and further proceedings.

MR. CRAMER. Well, now, Mr. Chairman—

MR. WRIGHT. Mr. Cramer?

MR. CRAMER. The witness refused to answer the question as to whether he was indicted on the subject matter of the Roddy taking. The indictment itself clearly shows it relates to the Damort taking, and it would seem that the refusal to answer this question is a rather frivolous use of the privilege. And it is up to the chairman, of course, to make the determination as to whether the witness has the right to refuse to answer on this ground.

There are, of course, other grounds which he can invoke, if he sees fit, that have no relationship to the present indictment. And the Chair should rule as to whether this question has a relationship to the present indictment, and, therefore, what right he has to assert it.

The reason I am concerned about this is that we are setting precedents in this committee that are going to be cited in the future.

This lawyer, properly representing his client, has cited in this instance a precedent relating to our previous action. So that is the reason I am hoping we can get a clarification.

Mr. WRIGHT. The Chair is in accord with everything the gentleman from Florida has said, and I direct you and order you to answer the question.

Mr. O'CONNELL. I do not wish to be a witness against myself. So I must take the protection afforded me under the provisions of the fifth amendment.

Mr. WRIGHT. Are there further questions on my right?

Mr. GRAY. Mr. Chairman, yes.

Mr. O'Connell, how long have you practiced law in Boston?

Mr. O'CONNELL. I do not wish to be a witness against myself. So I must take the protection afforded me under the provisions of the fifth amendment.

Mr. GRAY. Mr. Chairman, it is very clear that this witness is not going to talk about anything that is concerned in the indictment or outside the indictment. And it gets around to just what I said a while ago. He is refusing to answer because it may tend to incriminate him. If he had said that an hour ago we could have proceeded.

Mr. SCHERER. Well, that is perhaps my fault because I was the one who suggested that I did not think it was proper for a committee of Congress to ask an individual questions that might adversely affect a criminal case now pending.

Mr. GRAY. I agree.

Mr. SCHERER. That is, adversely affect him, and thereby force the witness to take the fifth amendment.

Mr. GRAY. I agree with you, but I do not see how telling a person how long he has practiced law in Boston is going to incriminate him.

Mr. SCHERER. I agree with you. I do not know how that could possibly incriminate him.

Mr. WRIGHT. The Chair also agrees. Any further questions?

Mr. Bass.

Mr. BASS. Mr. O'Connell, are you presently engaged in the practice of law in Boston?

Mr. O'CONNELL. I do not wish to be a witness against myself. So I must take the protection afforded me under the provisions of the fifth amendment.

Mr. WRIGHT. The Chair is of the opinion that there is little purpose to be gained in any further questioning.

If it is agreeable to the committee, the witness is dismissed.

The Chair will call Frank L. Harney. Will Frank L. Harney please come forward and take the stand. Mr. Harney, will you raise your right hand. Do you solemnly swear that the testimony you will give to this subcommittee will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. HARNEY. I do.

TESTIMONY OF FRANK L. HARNEY, WELLESLEY, MASS.; ACCOMPANIED BY DOUGLAS G. MODE, WASHINGTON, D.C., COUNSEL

Mr. WRIGHT. Will you take that chair there, please. Will you state your full name, Mr. Harney?

Mr. HARNEY. Frank L. Harney, Jr.

Mr. WRIGHT. And what is your address, Mr. Harney?

Mr. HARNEY. 190 Lowell Road, Wellesley Hills, Mass.

Mr. WRIGHT. And what is your occupation, Mr. Harney?

Mr. MODE. Mr. Chairman, I am Douglas G. Mode.

Mr. WRIGHT. The Chair will permit the witness to identify his counsel. Do you care to identify your counsel prior to answering the question as to your occupation? This is the last question the Chair will propound.

Mr. HARNEY. Yes, sir; if I may. My Washington counsel is Mr. Douglas G. Mode of 824 Connecticut Avenue, Washington, D.C.

Mr. WRIGHT. Mr. Mode, now it is not the disposition of the Chair to cut you off—

Mr. MODE. I appreciate that.

Mr. WRIGHT (continuing). Or in any way to limit anything that you might desire to say to the committee.

The Chair was preparing to ask committee counsel to propound his first question. If you have a statement that you desire to make at this point it is not the disposition of the Chair to deny you that privilege.

Mr. MODE. I appreciate that. Thank you. I do have a statement, Mr. Chairman.

We did, on February 2, file a written request with Chairman Blatnik, with a copy, a true copy, to Mr. May. And Mr. Blatnik and Mr. May, I am sure, have copies of that correspondence. In effect, it requested this committee to excuse Mr. Harney at this time from testifying or appearing before the committee. And, while I am reluctant to take a free ride on the prior counsel's argument, I am prepared to argue the identical proposition that has just been argued by Mr. Haley.

We are in the identical situation as the previous witness, and what the chairman has ruled and the committee has adopted would be applicable to my client, Mr. Harney.

We went one step further and requested the committee to excuse Mr. Harney from even appearing. We feel that that in itself places him—deprives him of certain civil and constitutional rights. Of course, we are here. We still feel it is wrong, and under the doctrine of the separation of powers, that we are now in the courts on, while we would be willing to cooperate at a future time, we must at this time take that position.

Mr. WRIGHT. Counsel's request was received and was considered, and the chairman felt that it might serve the purpose of the subcommittee that Mr. Harney should be called, and, therefore, he was called.

Now, in order to simplify the procedure, does the witness refuse to answer questions not relating specifically to grounds on which he was indicted?

Mr. MODE. May I have one more word, Mr. Chairman?

Mr. WRIGHT. Indeed you may. I will withdraw that question and then pose it later to the witness.

Mr. MODE. As was pointed out by Mr. Hurley—Now I was not the trial lawyer in this case. Mr. Rudman of Boston tried the case, but I have consulted with him.

It is my understanding that certain evidence—it was attempted to put in certain evidence, the U.S. attorney did, and the trial judge excluded that evidence. And, on the basis of the appeal, and if a new trial is ordered, then that trial judge may or may not allow

this evidence that was excluded before to come in and to become a part of the evidence in that proceeding. So I stress that.

I know some of the members are not lawyers and might not realize that something like this could be harmful to the Government as well as to my client. So we take the same position that Mr. O'Connell took.

Mr. WRIGHT. The chair takes cognizance of the statement made by counsel for the witness.

Mr. May.

Mr. MAY. Mr. Harney, I will ask you a question that is totally unrelated to the subject matter for which you were convicted.

We have testimony here from a Mr. Adrian A. Beaulieu, the first day of our hearings, B-e-a-u-l-i-e-u, and Mr. Beaulieu mentioned an occasion when he had a conversation with you. I ask you did you have any contact whatsoever with Mr. Adrian Beaulieu?

Mr. HARNEY. I must say that I must decline on the basis of my counsel's representation to me that I do.

Mr. WRIGHT. Well, now, on what basis does the witness decline to answer?

Mr. HARNEY. I decline to testify—well, may I read you a statement?

Mr. WRIGHT. The witness may indeed read a statement.

Mr. HARNEY. Upon the advice of counsel, I decline to testify for the above reasons, and do hereby invoke the rights afforded me under Article V of the U.S. Constitution.

Mr. MAY. Mr. Chairman, in view of Mr. Harney's position at this time, I see no purpose in putting further questions to Mr. Harney. The record up to his point is quite clear with respect to Mr. Harney's activities. I have no further questions.

Mr. WRIGHT. Are there any questions on my right?

On my left?

Mr. Bass.

Mr. BASS. Mr. Harney, what is your present occupation?

Mr. HARNEY. I decline for the reasons heretofore given.

Mr. WRIGHT. Will the witness please repeat his reply.

Mr. HARNEY. I decline on the reasons heretofore given, and do hereby invoke the rights afforded me under Article V of the U.S. Constitution.

Mr. WRIGHT. Any further questions?

Mr. GRAY. For what reason, Mr. Chairman, I would like to ask Mr. Harney. For what reason do you invoke the fifth amendment?

Mr. HARNEY. Because as a citizen of the United States, it is my right to invoke it.

Mr. GRAY. I know. What is the reason? On the grounds that it may tend to incriminate you? Is that the reason? You do not want to be a witness against yourself? It may tend to incriminate you?

Just for what reason? You just do not pick up and hold the fifth; you have got to have a reason.

Mr. HARNEY. Would you like me to read the fifth amendment to you?

Mr. GRAY. No, I do not want you to read the fifth amendment. I would like you to tell me, and this committee, what your reasons are for invoking the fifth amendment. Surely you have reasons.

Mr. SCHERER. Maybe we can help out here.

What Mr. Gray really means is that there are a number of provisions in the fifth amendment. Which provision of the fifth amendment do you invoke?

Obviously you are invoking that provision which provides against self-incrimination.

Mr. HARNEY. I do not wish to become a witness against myself.

Mr. WRIGHT. I think the answer is adequately responsive, and probably it would not be within the province of the committee to inquire beyond that.

If there are no further questions, this witness is dismissed.

Mr. MODE. Mr. Chairman, we, too, asked Chairman Blatnik to make the request a part of the committee record, and I would like to restate that request.

The letter is written by Mr. Rudman and myself to Chairman Blatnik. Could it become a part—

Mr. WRIGHT. That will be considered in executive session. The witness is dismissed.

Mr. JONES. The next witness is Mr. Anthony DiNatale. Mr. DiNatale, will you stand and raise your right hand?

Do you solemnly swear that the testimony that you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DiNATALE. I do.

TESTIMONY OF ANTHONY DiNATALE. MILTON, MASS.

Mr. JONES. Will you furnish the committee your name, your address, and your occupation?

Mr. DiNATALE. My name is Anthony DiNatale. I live at 344 Adams Street, Milton, Mass.

Mr. JONES. Counsel will proceed.

Mr. MAY. Mr. DiNatale, what is your occupation at the present time?

Mr. DiNATALE. I am a member of the Massachusetts Toll Road Authority.

Mr. MAY. Were you formerly commissioner of the Massachusetts Department of Public Works?

Mr. DiNATALE. Yes, sir.

Mr. MAY. When were you appointed to that position?

Mr. DiNATALE. September 12, 1957, to about August 1 or the first week in August 1960.

Mr. MAY. You resigned in August 1960?

Mr. DiNATALE. Yes, sir.

Mr. MAY. Mr. DiNatale, prior to becoming commissioner of the public works department, what had been your experience?

Mr. DiNATALE. Well, we are in a family business. It is a lumber business, a flooring business, and somewhat of a manufacturing business of which I was its head.

Mr. MAY. At the time you were appointed commissioner, had you ever held—

Mr. JONES. Just a minute. Close the doors.

Mr. SCHERER. May I inquire, Mr. Chairman, how long we are going to run?

Mr. MAY. It should not be too long, Congressman; 30 minutes at most.

Mr. DiNatale, prior to the time you became commissioner had you held any previous elective or appointive positions?

Mr. DiNATALE. No, sir.

Mr. MAY. Had you had any experience in the affairs carried on by the department of public works prior to your becoming commissioner?

Mr. DiNATALE. No, sir.

Mr. MAY. Could you just say a few words about the department?

Mr. DiNATALE. Yes.

The department of public works is one of the, if not the oldest department of public works in the United States. Its history is one of long standing.

It has many of the old policies. Perhaps I might say during its first years it did about \$250,000 worth of work per year, and up into the future years, and to now, in the 1960's, and during my time, it was spending approximately \$86 million per year.

It is a large complex department with many divisions to it, with approximately 5,000 or 6,000 employees. Of course, its business is to build roads.

It has other divisions, such as the right-of-way division. It has the beaches division, waterways division, maintenance division, and also it has eight districts scattered throughout the width and breadth of the State, and each district with its own division and in charge of each particular area known as from area 1 to area 8.

Mr. MAY. To illustrate the growth of the department over the years, am I correct that in 1960 the appropriations for new highway construction totaled some \$86 million?

Mr. DiNATALE. That is right, sir; yes, \$86 million.

Mr. MAY. Between 1949 and 1960, Massachusetts had invested nearly \$700 million for road and highway construction?

Mr. DiNATALE. Yes. As a matter of fact, one of the first things I did when I was there was to take an inventory of all the roads that Massachusetts owned, and it was approximately \$700 million.

Mr. MAY. Mr. DiNatale, when you took over in September of 1957, was the department adequately equipped, administratively?

Mr. DiNATALE. The department—and that is compared with the new act, the Federal Aid Act, which more or less propelled it into a much greater volume of work than previous years, and I began to feel that, as a result of this new Federal aid and new moneys coming into the State, as other States, that the State wasn't adequately staffed.

I say "adequately staffed"—I don't think there were enough employees of a permanent nature in the department to fully conduct the accelerated program, as I would have liked to have seen it, although we did push along quite rapidly with the crew that we did have. They were a very fine, dedicated career people in the department.

Mr. MAY. Mr. DiNatale, when you took over in 1957, you then had the problem of acquainting yourself with the major operating responsibilities of the department, is that true?

Mr. DiNATALE. Well, it is true; yes, sir.

Mr. MAY. Now, we are concerned here with right-of-way.

When you took over, what steps did you take to see that the right-of-way program being carried on by the department was being carried on properly?

Mr. DiNATALE. When I took office, or assumed office, we had two associate commissioners. One was rather sick and wasn't in his office too often, but his term was running out, and his name was Mr. Fitch.

The other one we had was Mr. Dole. And Mr. Dole had been in the office of associate commissioner——

Mr. MAY. Is that Fred Dole?

Mr. DiNATALE. That's correct; Fred Dole. He was appointed by former Governor Herter and served in the department as associate commissioner for Commissioner Volpe at that time, who is now Governor of Massachusetts, and also Commissioner Sheridan.

I had every reason to share the same degree of confidence in him that they did and, as a result of this, I decided that he would be my man to take care of the right-of-way division, which he had, anyway. He has had it since 1952.

I also, of course, relied very heavily on the professional services of a board of review, and this board of review also functioned and was authorized in 1952.

I think they were also appointed by Governor Herter and the same board is there as of today. It remains unchanged today.

Mr. MAY. So you took great comfort in the fact that you had Associate Commissioner Fred Dole, who was going in around 1953, who had handled the right-of-way operation through the years.

You took great comfort in the fact that you had a real estate review board that you felt would watch over the program, is that correct?

Mr. DiNATALE. I certainly did.

Mr. MAY. Did you give Mr. Dole complete charge of the right-of-way section?

Mr. DiNATALE. Yes, sir; he had charge of that whole department, you know, in conducting the services and also presenting the cases to the review board, et cetera.

Mr. MAY. And he was responsible directly to you?

Mr. DiNATALE. Yes, sir.

Mr. MAY. Mr. DiNatale, were you besieged by requests from various people for work and for fee appraisals and such matters?

Mr. DiNATALE. Oh, yes, of course. Many. In a position like that there are always people looking for employment. It is part of it, as I have learned, in politics and I want to say here I am not ashamed of being a part of politics. It hasn't been my first, and I hope it won't be the last, as a matter of fact, but this is the patronage system under politics, and there are many people that look for jobs, some qualified and others, perhaps, are not.

And they fill out applications and the applications in most cases, I supposed—I don't look at these, but those that do, find that they seem to be all right, and they are put to work, perhaps.

And then also when they are on a job you might find some inequities or some people that might not be quite as capable as they thought they were or maybe—what is the expression that is used—"goofing off," or some sort of thing, but these, you try to weed out, and that sort of thing.

Mr. BALDWIN. Mr. Chairman, may I ask a question?

Mr. JONES. Congressman Baldwin?

Mr. BALDWIN. Mr. DiNatale, the question that had been asked of you by our counsel was about applications for fee appraisers. And you said "this is the patronage system under politics."

Do I understand you to mean that the procedure you followed in employing fee appraisers was following the patronage system under politics?

Mr. DiNATALE. Of course not. No. No. The way you hire appraisers is an appraiser would ask for a job, and then he would be required to file an application, and then if his application proved out that he was qualified he then would be given trial jobs. If he worked out all right he was kept, and if he didn't, Mr. Dole would not keep them.

Mr. BALDWIN. Thank you.

Mr. MAY. When you were speaking of the patronage, Mr. DiNatale, you were—

Mr. DiNATALE. I went far afield. I am sorry.

Mr. MAY. But you were talking more about the department itself?

Mr. DiNATALE. Yes, sir.

Mr. MAY. When you did receive requests from or on behalf of people who wanted to do fee appraisal work, to whom did you submit those requests?

Mr. DiNATALE. Mostly to Mr. Sheridan. He was the personnel director and executive or administrative assistant.

Mr. MAY. How would you receive those requests, Mr. DiNatale?

Mr. DiNATALE. So many different ways. You know, in a job as a public works commissioner you not only put in 14 hours a day, but you also are required to attend banquets, et cetera. And I know that my pockets would be stuffed with all kinds of papers the following morning where people had just dropped notes in my pocket.

Most of the time I threw them away. Sometimes I give them to Sheridan to see if he had any use for these people.

We would get all kinds of letters where people have families that didn't have anything to eat and this sort of thing. They would come from all different angles.

Mr. Sheridan would be up as a legislative agent. Many of the legislators would ask him to put on some of their people, their constituents, that would be asking them, in turn, to see if they could get them a job. So you would get them from all angles.

And I might add, that each morning the office of the personnel director would be lined up with anywhere from—and I don't exaggerate. When someone told me this figure, that there was anywhere from 100 to 500 people there, I didn't believe it, and one day I decided to go up on that floor and, by gosh, they were there.

On a Monday morning you couldn't get through the place for the people looking for jobs.

Mr. MAY. Mr. DiNatale, you consider that the actual selection of the fee appraisers and the continued use of the fee appraisers was the sole responsibility of Associate Commisisoner Dole?

Mr. DiNATALE. Nobody else but Commisisoner Dole could put them on, as a matter of fact, because I wouldn't allow anybody to interfere with him.

I had great confidence in him and I still do. He is a very fine gentleman, a career gentleman.

MR. MAY. Mr. DiNatale, you have mentioned Mr. Sheridan. Is that Edmund Sheridan?

MR. DiNATALE. Yes, sir.

MR. MAY. Will you explain his function in the department of public works? Was he there when you took over as Commissioner?

MR. DiNATALE. Yes, sir.

MR. MAY. He was some sort of an administrator of personnel at that time?

MR. DiNATALE. Yes, sir. He was personnel director, I think was his title.

MR. MAY. Did he then later become administrative assistant to you?

MR. DiNATALE. Administrative assistant and primarily in charge of legislation.

MR. MAY. Now, in the course of Mr. Sheridan's work, did he have any responsibilities in or interest in the right-of-way department?

MR. DiNATALE. Oh, no.

MR. MAY. Or the assignment of fee appraisers?

MR. DiNATALE. No, sir. No, he didn't have any. He could recommend, perhaps, but he had no authority to assign anybody.

MR. MAY. What other functions did Mr. Sheridan carry out?

MR. DiNATALE. Primarily his big function was legislative agent, going before committees, and either appearing for or against the bills that would affect our department in the many facets of the department, not only in highways, but also in these other areas such as beaches and waterways, et cetera.

MR. MAY. Another name has entered our hearings previously, Mr. DiNatale, Mike Kelly. Who was he?

MR. DiNATALE. Yes, sir. Mike Kelly was—I took him to the department with me.

MR. MAY. What had he done prior to that?

MR. DiNATALE. He used to drive me, and a very fine boy, and I took him there as—I don't know whether I should use the expression, but I called him a buffer.

When these people would try to get in to see me—you had so many things to do—Mike, it was his job to kind of weed them out, so to speak, and try to keep them from coming in or steer them to the proper areas where they might get the help they are looking for without interfering with my line of duties, so to speak.

MR. MAY. So, Mr. Kelly handled generally what? Complaints and the citizens and the people who would come to your office attempting to see you?

MR. DiNATALE. That's about right.

MR. MAY. He would weed out what he considered the less important matters and let the important matters filter through to you. Is that right?

MR. DiNATALE. That's true.

MR. MAY. Now, in the course of his work, Mike Kelly, did he have any responsibility for or any interest in the right-of-way department?

MR. DiNATALE. Oh, no. No.

MR. MAY. Or, the assignment of fee appraisers?

MR. DiNATALE. No; he didn't have anything to do with that whatever.

MR. MAY. Who is George Toumpouras?

Mr. DiNATALE. George Toumpouras was——

Mr. MAY. How do you spell that, T-o-u-m-p-o-u-r-a-s?

Mr. DiNATALE. "a-s" or "i-s," I think. "o-u-s," I think. I am sorry.

Mr. MAY. T-o-u-m-p-o-u-r-a-s?

Mr. DiNATALE. I always had trouble with the name, to tell you the truth.

Mr. MAY. Who was he?

Mr. DiNATALE. I shouldn't have, because I have known him for many years.

Mr. MAY. Who was he?

Mr. DiNATALE. George Toumpouras was appointed as associate commissioner, I think, sometime in late 1958.

I am not too sure of the date, and when he came into the office as associate commissioner I took some of the duties away from Fred Dole, whose duties were getting compounded at the time because our road program was accelerated and moving along quite rapidly.

And I took waterways division, beaches, outdoor advertising, which is another agency I forgot to mention, and chapter 80 hearings, waterways hearings, things of that nature, and allocated these duties to Commissioner Toumpouras.

Mr. MAY. You took some functions away from Mr. Dole and gave them to Mr. Toumpouras? You took none of the right-of-way functions away from Mr. Dole?

Mr. DiNATALE. Oh, no.

Mr. MAY. Mr. Toumpouras, in the course——

Mr. DiNATALE. Mr. Dole was always acting commissioner when I was not there.

Mr. MAY. All right.

Mr. DiNATALE. Up until the time I left.

Mr. MAY. All right. Mr. Toumpouras, in the course of his work, has no responsibility for and no interest in the right-of-way problems. Is that right?

Mr. DiNATALE. That's correct, but there is one qualification.

Mr. MAY. All right.

Mr. DiNATALE. At one time I did give Commissioner Toumpouras—as a matter of fact, it was an order, when Commissioner Dole was out of town or was on a convention or something, and I had a large group of people come in on me down around the Attleboro area, there were Providence papers and so forth——

Mr. MAY. May I help there, Mr. DiNatale?

Mr. DiNATALE. Yes, sir.

Mr. MAY. As commissioner, you wanted to build roads. Right?

Mr. DiNATALE. That was my real intention, and I think I did.

Mr. MAY. And you did that?

Mr. DiNATALE. I think I did.

Mr. MAY. Did there not come a time when the construction got somewhat ahead of the right-of-way functions?

Mr. DiNATALE. Well, you are embarrassing me but you are absolutely right.

Mr. MAY. And one of those situations happened down in Attleboro, did it not?

Mr. DiNATALE. That's correct.

Mr. MAY. As a matter of fact, this is one of the projects we have been discussing for several days here.

Down in Attleboro, where the bulldozers were on the project kind of nudging the houses before anybody had made appraisals for the State. Is that right?

Mr. DiNATALE. I actually saw pictures of this, to my amazement. I was quite disturbed.

Mr. MAY. Yes, apparently.

Mr. DiNATALE. This did happen.

Mr. MAY. This did upset the people down in that area?

Mr. DiNATALE. You are using the term very mildly, sir.

Mr. MAY. And this apparently was brought to your attention and something had to be done?

Mr. DiNATALE. That's when I called in—that's the occasion when I called in Toumpouras, as a matter of fact.

Mr. MAY. Dole was away and you called in Toumpouras and you instructed him to get the fee appraisers assigned to these parcels and get going?

Mr. DiNATALE. That's right. And, as a matter of fact, he worked about 4 days, including a weekend there, day and night, to get these appraisals out to continue on that work.

Mr. MAY. Other than that particular episode, did Mr. Toumpouras have any interest in the right-of-way department—

Mr. DiNATALE. No, sir.

Mr. MAY (continuing). Or the assignment of fee appraisers?

Mr. DiNATALE. No, sir.

Mr. MAY. Mr. DiNatale, we have heard mention throughout the hearings of a man named William M. Jacobs. Does that name sound familiar to you?

Mr. DiNATALE. Yes, sir.

Mr. MAY. What can you tell us about Mr. Jacobs?

Mr. DiNATALE. Well, as I said before, you know, you get around to the various functions in the evening, and you get rumors and, of course, I think the public works department—I am looking at a couple of people here that are familiar with it, Boston people—I think they are reporters—to my way of thinking, it is the biggest rumor factory among the whole State.

Maybe it would be people that work in the department, I don't know, but I certainly would hear on the outside about watch out for this person, and watch out for that person.

Mr. MAY. All right, Mr. DiNatale. You were mentioning that the department was kind of a rumor factory and you would go to various functions. What would happen?

Mr. DiNATALE. Not by choice did I go to these functions, but I had to attend them.

I did hear a rumor where someone said to me, "You better be careful of this guy, Jacobs," and I said "I don't know who Jacobs is. And I care less."

And he said, "He is one of your appraisers," and so forth.

I said, "I don't know anything about him." And, you know, you toss these things off, because you hear it so often. It could be a Jacobs today and it could be a DiNatale tomorrow.

You don't know who. It was all according to who was getting what, I suppose, or someone was looking for a job and, perhaps, there

was no room for him and he would probably feel that maybe that was one way he could get a job, is to talk about people.

But, nevertheless, I don't know. I shouldn't go off on that, but I spoke to Commissioner Dole about Mr. Jacobs, and I am not too sure of my timing that I am going to mention, but at one time it seems to me first that Mr. Dole came in to me complaining about a Mr. Jacobs charging too much.

And if you respect my language, I said, "What the hell are you bothering me for? Fire him. Get rid of him if he is costing you too much. I don't care what you do with him. Get rid of him."

I think he did. At least, I am quite sure he did.

Now, I am not positive in my mind whether it was at that time that I told him to get rid of him or whether it was at a future time.

This is the—I tried to think out the timing on this.

MR. MAY. But there did come a time that you told Commissioner Dole to get rid of Jacobs?

MR. DiNATALE. This is definite. This is very definite.

MR. MAY. Did you understand that Jacobs was functioning as a fee appraiser? He was a departmental employee? Are you aware of that?

MR. DiNATALE. Not until I asked Dole about it.

MR. MAY. You didn't even know who he was?

MR. DiNATALE. No. No.

MR. MAY. Had you ever met him?

MR. DiNATALE. I met him once at a function, and he introduced himself to me.

MR. MAY. That was afterwards?

MR. DiNATALE. I think it was. I think it was afterwards.

MR. MAY. At any rate, some great amount of time later he came to your attention, and perhaps this was even after you left the department, that Mr. Jacobs was not, in fact, discharged at the time you instructed that he be discharged. Is that right?

MR. DiNATALE. Well, let me—I think I get your question correctly. I thought he was, and I found out that—sometime when I was asked was Mr. Jacobs working and, by gosh, I was under oath, I think, too, and I said "No, he is not working in the department." And I was completely embarrassed when he said to me, "Well, here he is still working in the department."

I actually didn't know. I thought he was not.

MR. MAY. Mr. DiNatale, did Commissioner Dole ever complain to you that his assignments of fee appraisers were being changed?

MR. DiNATALE. Yes, sir.

MR. MAY. Will you tell us about that?

MR. DiNATALE. He came in to speak to me about something like this, that someone was tampering with his appraisal assignments or something along this line.

I think we discussed it. I said, "Fred, is your door locked? Do you have your records locked?"

He said, "Yes, but I guess it probably happened during the time of the workday or something."

I don't know when it ever happened, but I do know this, that I discussed this with Fred, and I said, "Fred, no matter what the heck anybody does, you can change it back the way you want it. This is—

you are the boss of this department and don't let anybody toss you around, no matter who it is."

As a matter of fact, I think I—I respectfully don't like to mention it—I said, "Even if my mother comes and asks you for a job, I want you to be—you take care of this yourself the way you have always done it."

"I have full trust and faith in you and don't let anybody bother you."

MR. MAY. Did Commissioner Dole say who was making the changes? Did he mention the names?

MR. DiNATALE. Yes. He did mention names. He mentioned that he thought Eddie Sheridan was changing them or was bothering him to put on people, but he said, "Eddie Sheridan."

I called him in, and he said, "All I merely did is give him recommendations."

I also asked of Mike Kelly the same thing. He said he did. And of Toumpouras, but I think he was under the impression that it was Eddie Sheridan.

MR. MAY. Actually, the commissioner was complaining about changing his assignments of fee appraisers and not particularly about suggesting names. Is that right?

MR. DiNATALE. That is correct. That is what he was complaining about; yes.

MR. MAY. And Sheridan, Kelly, and Toumpouras denied that they were changing them; is that right?

MR. DiNATALE. That's right.

MR. MAY. Mr. DiNatale, we have heard some testimony relating to Orlando Q. Spagnoletti.

There came a time—and we will hear more—there came a time when Mr. Spagnoletti was promoted to right-of-way agent. Did you have anything to do with his promotion?

MR. DiNATALE. To my knowledge—he was there—he was there for years, I guess, before I got there, and I never appointed him, to my knowledge, at least.

I looked into this matter. I read this in the paper somewhere. As a matter of fact, I read it in the paper, and I see one of the newspaper people here. I thought it was very unkind of him to refer to these names as "DiNatale & Co."

I don't know whether they realized that there is a DiNatale & Co., but I am not part of it. I thought it was rather unfair, but, be that as it may, they referred to names of Spagnoletti and other names as "DiNatale & Co."

I did not, to the best of my knowledge, ever appoint or elevate him to any higher job than what he had when I came into the department.

MR. BALDWIN. Will the gentleman yield?

MR. GRAY. Mr. Baldwin.

MR. BALDWIN. If I understand it correctly, Mr. DiNatale, you were the head of the department, so if there was any promotion at any time, under your jurisdiction as head of the department, the responsibility basically was yours, was it not?

MR. DiNATALE. That is correct, with one exception, that there is a general step rate increase that takes place I think once a year or once every 6 months, but basically you are absolutely right, that to pro-

mote anybody in that kind of an area would have to have my signature.

Mr. BALDWIN. Was this promotion an automatic step increase, or—

Mr. DiNATALE. No, this promotion was accomplished by a previous—

Mr. BALDWIN. It was what?

Mr. DiNATALE. It was accomplished by a previous commissioner.

Mr. BALDWIN. The promotion that we are discussing?

Mr. DiNATALE. Yes, sir.

Mr. BALDWIN. I see.

Mr. DiNATALE. Yes, sir.

Mr. BALDWIN. I thought that the promotion occurred during this period of time that we are discussing in the hearings of the last several days, around 1958 or 1959?

Mr. DiNATALE. I know; he was promoted and his name and papers were sent up to the bureau of personnel and standards in the state-house. This is not anything to do with the department; this is—I think it is a civil service organization or some such, but they have to approve it, but it comes back for the commissioner.

This was done during the period that I was not a commissioner. It might take sometimes a month, 2 months, perhaps 3 months to accomplish this step.

During the period that Commissioner Sheridan resigned, and I was appointed, the papers were processed and then came back, and it requires a stamp of the commissioner to just approve it.

Mr. BALDWIN. Then you applied that stamp, I take it?

Mr. DiNATALE. Yes, sir.

Mr. BALDWIN. Thank you.

Mr. MAY. Maybe we should clarify the record. There are two Sheridans about whom we have been speaking. One is Edmund Sheridan, that we have already discussed.

The commissioner you just mentioned was Carl Sheridan, who preceded you in the department of public works?

Mr. DiNATALE. Yes, sir.

Mr. MAY. On one occasion two people by the name of Carl Colburn and Harvey Hamilton, in the district of Worcester, were transferred. Would you know anything about that transfer, Mr. DiNatale?

Mr. DiNATALE. Never heard the names until today, and if they were transferred, I don't know who the heck transferred them without an order of the commissioner. I think that is the rule. I am not sure, but—

Mr. MAY. Did Commissioner Dole or Herb Dodge—

Mr. DiNATALE. I am sorry. Each division head can move their men around.

Mr. MAY. Did Commissioner Dole or Mr. Herb Dodge ever complain to you about pressures being brought to bear on them with particular land takings?

Mr. DiNATALE. I don't think I followed you, really. May I repeat it?

Mr. MAY. Yes.

Mr. DiNATALE. Did Commissioner Dole ever complain to me about pressure being brought upon him in regard to land damage cases?

Mr. MAY. That is right.

Mr. DiNATALE. No, not that. Appraisers he did, but not—no.

Mr. MAY. Thank you. Neither did Mr. Dodge?

Mr. DiNATALE. No, sir.

Mr. MAY. Commissioner, we have been told that in great part the employees furnished to the right-of-way department were not competent, not qualified, were temporary employees, moved in and out with some rapidity and, in fact, were not competent to carry on the right-of-way program properly. Would you comment on that?

Mr. DiNATALE. Well, it is possible. For the 3 years that I was there, I can tell you this, that I put in my budget each year for permanent help, particularly in the right-of-way division, in addition to other divisions.

It is a rather strange way, and it is a very complex thing, how this temporary and permanent help gets into it. I don't like to get into the mechanics of it because I don't know a great deal about it myself, but I do know this much: That in testifying before the ways and means committee, I never could understand what is the difference of a permanent position and a temporary position when the fellow—you were spending the money, anyway, and there are people in the department of public works, and believe this, that are temporary for maybe 8 to 10 years.

And it always seemed rather strange to me that this should have that kind of a tag. I tried to correct this, but I never could get it through the ways and means committee.

I was never able to get it on the floor of the house.

Mr. CRAMER. Are you suggesting, then, that you recommended that there be more permanent employees?

Mr. DiNATALE. Yes, sir, I did.

Mr. CRAMER. And that was the ways and means committee of the State house?

Mr. DiNATALE. Yes, sir.

Mr. CRAMER. You recommended it to them?

Mr. DiNATALE. Yes, sir. I also—I don't mean to take—go ahead; I will answer the questions.

Mr. MAY. Mr. DiNatale, while you were commissioner, did you have any suspicion that the right-of-way program was not being carried out properly?

Mr. DiNATALE. Well, I was concerned that it was not keeping pace with the construction. I was too far ahead with construction and not—it didn't stay up that close with it.

I wasn't concerned about it for several reasons, because I think I had good, competent people in there. You had career people in the right-of-way division who were in there from 20 or 30 years, that were heading up the division.

You had Commissioner Dole. In addition to Commissioner Dole, I requested from the Federal Bureau of Roads—I am sure you will find the letters on record—many times to Administrator Tallamy and to District Engineer for the Bureau of Roads, Mr. Hall, who were to give me additional help, so that the Federal Bureau could process these cases as a copartner with us before it got into the review board.

But they were short of help, too. They wanted to cooperate and did, to the best of their ability, but they were short-handed also, and I think they sent over one man to help.

And that was another thing that made me feel a little bit secure. But mostly I felt secure in the land damage cases because they had professional experts.

Now, maybe people have taken issue with me on this, but I just don't understand it, because these——

Mr. CRAMER. You are talking about the review board?

Mr. DiNATALE. I am talking about the review board, and I am not trying to place the blame on anybody, please believe me. This is not my intention.

But the review board is made up of experts that are appointed by the commissioner. The original board is still there that was appointed back in 1952.

And these men are selected from people submitted—names submitted by the Massachusetts Real Estate Board.

Now, these fellows are experts, in my opinion. I accepted them as such.

Now, at one time I heard in the paper where they said that they couldn't do anything about Bergen Evans. Well, I don't know. I know this much, that somewhere along the line there is a professor at MIT that wrote a book about lumber, its uses, and its experts, and through some peculiar coincidence my name is among them, and let me tell you, I don't think I am anywheres near an expert, but you show me a piece of wood, and if I can't tell you what it is, then, by gosh, I am not an expert. And if you want to try me out, I am available.

Mr. BALDWIN. Mr. Chairman, may I ask a question?

Mr. GRAY. Mr. Baldwin?

Mr. BALDWIN. Mr. DiNatale, you mentioned that this review board was subject to reappointment periodically. Did they serve for a fixed length of term?

Mr. DiNATALE. No, they worked on a per diem. They get \$155—think it is \$200 a day now. I think while I was there it's about \$150 a day. There is no term.

Mr. MAY. Excuse me——

Mr. BALDWIN. In other words, then they are subject to renewal by each new commissioner?

Mr. DiNATALE. Oh, no.

Mr. BALDWIN. They do not automatically carry through——

Mr. DiNATALE. No, they have never been replaced.

Mr. BALDWIN. I see. So when you became commissioner then they continued not because of any fixed length of term, but because you made the conscious decision of some type in your own mind that they should be continued in the positions that they held?

Mr. DiNATALE. Yes, they were up there, you know—they are there. Leave them alone.

You know, they are way up in here somewhere and no one is allowed to talk with them. No one would be allowed, you know. I don't know how many times I have got requests from people, attorneys, if they could go before the board and present a case. Never would I allow it.

As a matter of fact, I only met them once in my life myself, when I first took office. I was introduced to them and that was the only time I ever met them.

Mr. BALDWIN. But you had the authority, as commissioner, to appoint any person to any of those positions if you desired to exercise it?

Mr. DiNATALE. If there was an opening. I could not appoint. I could only appoint from names that would be submitted to the commissioner by the Massachusetts Real Estate Board.

I couldn't take and decide on any individual myself. They would have to come from that board. That is the law.

Mr. BALDWIN. Yes, I understand that, but when you said if there is an opening—

Mr. DiNATALE. Yes.

Mr. BALDWIN. If I understood your testimony correctly, they did not have a fixed length of term.

So if you wanted to appoint someone new to a position you had the right to from the list that came to your department—

Mr. DiNATALE. I am not too sure. I don't know how that reads, to tell you the truth. I don't know whether or not—

Mr. BALDWIN. Well, these people certainly must be above and beyond all the people that are in the State of Massachusetts?

Mr. DiNATALE. I really don't know whether a commissioner can just say, "Look, I don't want him anymore," and ask for new names. I am not too sure about this, whether he can or not. It might be.

Mr. BALDWIN. Well, all I am saying is there must be some authority that has the power to appoint or remove this board of review.

Mr. DiNATALE. Perhaps. Maybe the commissioner has that right. I am not sure.

I follow you in what you are saying, but I think we are both on the same track that the commissioner, as such, cannot appoint a member to the board of review as he sees fit. Do you follow me?

Mr. BALDWIN. Well, I follow you, but it seems to me that in the capacity you served, this would be one thing that would have been up to you to determine, whether or not you had the right to appoint or remove—

Mr. DiNATALE. No, no. My gosh, I don't have that law with me. I left it in my room. But the law reads, it is very specific, that if an opening occurs—I will see if I can remember it—that—

Mr. MAY. We have it here, Commissioner.

Mr. DiNATALE. Oh, have you?

Mr. MAY. We might be of some help to you. Actually, the board, beginning back in 1952 or 1953, received 2-year contracts and was renewed.

The original board sat for the periods from 1952 or 1953 up to, I think, about a year ago. The same five members continued on, their contract being renewed every couple of years.

Mr. BALDWIN. Then may I ask, Mr. Counsel, who had the power under the law to renew their contracts?

Mr. MAY. The commissioner.

Mr. BALDWIN. I see.

Mr. MAY. I think this contract is signed by the commissioner.

Mr. CRAMER. May I ask a question, Mr. Chairman?

Mr. GRAY. Mr. Cramer?

Mr. CRAMER. Well, if you did not feel that you had any specific jurisdiction over the review board, however, you did have specific jurisdiction over the getting together of appraisal information and the presentation of it to the review board, did you not?

Mr. DiNATALE. No; I never presented any——

Mr. CRAMER. I mean your department did.

Mr. DiNATALE. The department, oh, yes; sure.

Mr. CRAMER. The department under you, had the function of submitting appraisals to the review board?

Mr. DiNATALE. Oh yes; sure. The associate commissioner, whose duty it was to present these to and to the review board, the associate commissioner and a member of the right-of-way division from the Federal Bureau of Roads, would together get these appraisals in order in some form—I never saw any of them—as they would come from the right-of-way division.

These two men, after they reviewed them, would then submit them to the review board for their action.

I think that—I am pretty sure that is about the way it works out.

Mr. MAY. Congressman, this might be of some help to us, and I am quoting from the Acts Resolved, 1952, chapter 556, section VI, second paragraph:

There is hereby created within the department of public works a real estate review board, consisting of five members to be appointed by the commissioner from members of the Boston Real Estate Board, from resident Massachusetts members of the American Institute of Real Estate Appraisers, and from members of the Massachusetts Real Estate Association.

All vacancies on said board shall be filled by the said commissioner from a list of five names submitted by the Boston Real Estate Board and five names submitted by the Massachusetts Real Estate Association.

Said department shall fix the compensation of the members of the said real estate review board.

And the contract with the board members does contain a clause "Termination of agreement":

It is further understood and agreed that this agreement shall be subject to cancellation upon 10 days' written notice from the department of public works and said joint—

Mr. BALDWIN. Thank you.

Mr. DiNATALE. I learned something myself.

Mr. MAY. Commissioner, have you been somewhat surprised of the developments thus far in the hearings?

Mr. DiNATALE. Well, to be perfectly honest with you, I am a little bit shocked.

Mr. CRAMER. Just a little bit?

Mr. DiNATALE. Particularly at Mr. Dole. I don't know, there is no sense in me commenting on it, but I just don't believe it: that's all.

I feel sad about it. During the time that some of these things came out I kind of recognized that we had to keep pace with it—may I say this?

Mr. MAY. Yes.

Mr. DiNATALE. That we had to kind of keep pace with the acceleration of the roads or the road building program, and I got together one of the, perhaps, most famous engineering firms in the world, internationally known, known as the Stone & Webster Corp. And I retained them to survey every facet of the department.

This took about 6 or 7 months, but we worked in close harmony, and I would like to say this, that before the Stone & Webster Co. took this project over we sat across the table and said there would be no holds barred. It didn't make any difference who it implicated, what it was it hurt if it would mean—as a matter of fact, I

said, "if it means abolishing the commissioner, whom I don't think should be an appointee of the Governor—I think the commissioner should work his way up through the department.

"And if you feel that way, whatever you do, you are not hurting my feelings, or you're free—that you're not here to—we don't care whose feelings you hurt. We want a real, honest-to-goodness study."

They recommended—I asked them to use emphasis upon the right-of-way division. I wasn't completely happy or completely satisfied with the final results. I think the report was an excellent one. It was submitted as a special message to the Massachusetts Legislature, accepted, and passed and signed by the Governor.

And in it they recommended approximately 500 changes or implementations of which, I think, I put in about 85 percent of these recommendations.

Now, of course, that sounds like an awful lot to get into being immediately. There were many of these things that we recognized in the department, but it would be kind of difficult to implement them without the backing of such a large corporation like this. So, many of them were almost automatic as these reports would come in.

It is a 10-volume, voluminous report. I think this has done much to help the department. And I understand that now they are asking for 400 new employees and particularly emphasizing graduate engineers, such as the department, because of the low wage scale, never had the opportunity to bid for—

Mr. MAY. As a result of that study were recommendations made with respect to the right-of-way division?

Mr. DiNATALE. Yes; they were, and we carried out practically all of them although some required, like the permanent help part of it, required legislation or it requires acceptance by the ways and means committee.

And each year, as I said before, we would put in these names to try and get more permanent jobs, but I am sorry to say, we were never very successful.

Mr. BALDWIN. Mr. Chairman, I would like to ask one more question.

Mr. GRAY. Mr. Baldwin.

Mr. BALDWIN. Mr. DiNatale, one of the things that has been brought out here that is of deep concern to me is the apparent very loose requirements in the appointment of fee appraisers.

Mr. Schwartz, for example, testified that he had no experience whatsoever in any kind of appraisal work at the time he was first appointed as a fee appraiser.

You mentioned that you heard rumors that caused you to feel that Mr. Jacobs should be terminated.

In your capacity as head of the department, did you not give consideration to putting in effect some more adequate regulations as to the requirements a man must meet before he could qualify for the appointment of a fee appraiser?

Mr. DiNATALE. I did, sir.

Mr. BALDWIN. Well—

Mr. DiNATALE. We had an application form set up and now, this Mr. Schwartz that you speak of, I never saw him. I don't know who he is.

But it would be interesting to me, and perhaps to you, if we could look at his application before he was appointed and perhaps in there

he shows that he did have this experience and so forth and had some kind of a sign over his signature that he was qualified, and I don't think that Mr. Dole would have appointed him if he didn't.

I honestly believe he wouldn't. Now, no appraiser, to my knowledge, can be appointed without first filing one of these applications.

Mr. MAY. Commissioner, we have had one example already. Mr. Lawton, from Rhode Island, was appointed suddenly and he had never submitted any qualifications, never asked for the work. So it could happen.

Mr. DiNATALE. Yes, I read about that. That was where the review board asked for an extra one, or something like that.

Mr. MAY. An extra appraiser?

Mr. DiNATALE. And if what I read in the paper is correct, and I assume it is, they got someone in that area who was a Mr. Lawton for that.

It does happen, I suppose, on cases like this. It shouldn't happen, perhaps, but things like these once in awhile do get away from you.

Mr. CRAMER. Apparently those application forms which would apply to Mr. Schwartz, for instance, contain a place for him to say how many organizations he belongs to, but no place to say how many appraisals he has made.

He indicated—in attempting to get employment, he said he belonged to these different organizations but admitted he had never made an appraisal.

Now, is there anywhere on the form that indicates how many appraisals they have made or what previous work of this nature they have done?

Mr. DiNATALE. I am quite sure there is, sir. I am quite sure on the appraisal there is. I know there is, as a matter of fact.

Mr. CRAMER. Then if there is, Mr. Schwartz either lied on that or didn't put anything down, but he was hired anyway?

Mr. DiNATALE. Unfortunately, the—this might be the case.

Mr. CRAMER. Is that not one of the risks? Let me ask you this: Is it true that under you Mr. Ed Sheridan—he initially was personnel director and then became your administrative assistant. Is that right?

Mr. DiNATALE. Administrative assistant in charge of legislation.

Mr. CRAMER. And the patronage—

Mr. DiNATALE. And patronage, that's right.

Mr. CRAMER. Now, he was in charge of personnel to start with, and then became your administrative assistant and, as such, he still was in charge of patronage. Is that right?

Mr. DiNATALE. That's right.

Mr. CRAMER. So if anybody had a recommendation to make to the department for employment, Mr. Ed Sheridan was the one to see. Is that it?

Mr. DiNATALE. That's right; but he couldn't put any appraisers on.

Mr. CRAMER. I realize that. He could make recommendations?

Mr. DiNATALE. That's right. That's right.

Mr. CRAMER. He would submit the names to Mr. Dole or somebody else, the names that he recommended be appointed. Right?

Mr. DiNATALE. That's correct.

Mr. CRAMER. Now, this is how the patronage system operates. Is that it? Now, who would he submit? People who were politically active or friends of friends, or what?

Mr. DiNATALE. I think that you hit the thing right on the head when you said this is the kind—this is patronage or the patronage system. I don't know. I am not quarreling with it as long as people are qualified.

Mr. CRAMER. That is the point.

Mr. DiNATALE. That is the point, of course. In handling a lot of people, even in private business, I don't know, you probably have the same experience that I have, that you hire people that seem to work out all right, good on paper, and then somehow or other after a trial run, why, it didn't work out quite so good. And I hate to be one to say that people shouldn't have the privilege to work. I can't quarrel with that. I do believe in putting the right man in the right place to the best of one's ability. I agree with you 100 percent.

Mr. CRAMER. Well, Mr. Ed Sheridan was then the patronage dispenser for the entire department?

Mr. DiNATALE. But he did it mostly in recommending.

Mr. CRAMER. That is right.

Mr. DiNATALE. He would get these names from—

Mr. CRAMER. From whom? That is what I would like to know. Where did he get the names from?

Mr. DiNATALE. Oh, good heavens, from all over the State, from legislators, if you will, from—and it didn't make any difference. And, believe me, I am a Democrat. I don't mind telling you, but it made no difference whether you are a Democrat or a Republican, you got as many requests from one or the other, and I don't mind telling you this.

Maybe as a Democrat you would try to favor the Democrat. If I were in the position to do it, I would. I didn't do it because I never bothered with it. I was too busy.

Mr. CRAMER. That was Ed Sheridan's job. Right?

Mr. DiNATALE. That was Ed Sheridan's job.

Mr. CRAMER. And the question of whether it made a difference to him, we will ask Mr. Sheridan when he gets here.

Mr. DiNATALE. Yes; I don't know whether it made any difference to him or not. As a matter of fact, I don't even know whether he is a Republican or a Democrat.

Mr. CRAMER. Well, I do not, either. So we are together.

What are these 500 new employees? How are they going to be handled? By patronage through somebody like Mr. Sheridan who has the job of recommending?

Mr. DiNATALE. These new jobs that we are talking about? No. These jobs are being asked to be initiated by the legislature. It is a legislative problem.

It first must get through there, and then it will be worked out on a civil service examination sort of thing, which is the way they usually do it, and if these permanent—if these temporary jobs were made permanent, you see, they then would be—they would have to take these qualifying exams. But as long as they are not, well, then—and I don't want to get into that civil service thing too much, because I don't know too much about it. But I think I got it about like what I am saying.

Mr. CRAMER. Well, Mr. Harney, for instance, was employed for years and is still temporary.

Mr. DiNATALE. Yes; sure.

Mr. CRAMER. Is that civil service or continuity of service? How does it create dedication to your job when you know that every 6 months you have to be answerable to your boss?

Who are you going to be answerable to? The people, in doing your job, or your boss, who has to approve you again 6 months later?

Mr. DiNATALE. Maybe, Congressman, I agree with you. This is the darndest thing I ever heard of, but look, there are guys working there 20 years, 30 years, and in temporary positions. I don't know.

But this is positively a legislative matter. It is not the commissioner's prerogative. I wish the heck I could have. I would have made them all permanent and have them take qualifying examinations. I tried.

Mr. CRAMER. Well, the weakness of the patronage system, and I think you will agree with me, through Ed Sheridan or whomever it may be, is that if the fellow who asked you for that appointment happens to be chairman of that very ways and means committee you got to go before later for money, you are going to have a tough time in favor of somebody down the line, for not giving that guy a job whether he is qualified or not. Is that not true?

Mr. DiNATALE. Well, I don't know. I don't know. You have been in politics a great deal longer than I have, and I hope to be able to cope with an intelligent person like you someday.

Mr. CRAMER. That is the weakness of handling it on a patronage system, rather than on a merit or civil service basis, is it not?

Mr. DiNATALE. Well, I can't say that that actually takes place, though. There is a possibility, of course.

Mr. CRAMER. Well, of course, something must have taken place or we wouldn't have had all these problems, all these false appraisals. We wouldn't have had all of these appraisals as a result of getting unqualified appraisers who turned in unqualified appraisals, and something had to break down somewhere.

Mr. DiNATALE. There is no doubt about it. Somewhere along the line—I am not a philosopher, but I read, it seems to me, “where the human hand touches, there will be error.”

You and I both know, in your business, in my business, in General Motors, or any company you want to know, how many people do you think they have, of course, that are in the same category, but this is a different thing.

This is government and the other is private. But when they speak of private and government, it all comes out of the same pot. The taxpayer pays it, whether it is out of private industry or government.

The only difference that I have been able to learn between the two, although I am not quite sure I believe it yet, is that in my many times, Congressman, before this honorable committee, trying to get additional funds for Massachusetts' Interstate System, and also testifying for and in favor of the taking over the toll roads at the end of the system—it has brought me to Washington many, many times.

I have been before this committee I think a half a dozen times and to the Senate Committee, and so forth, and I was told one day, and I thought I was just being fluffed off, “DiNatale, there is one thing you must learn, that there is a difference between government and business. You are a businessman.”

And I said, “Well, I like to think I am.”

He said, "In business, you are a hero when you accomplish something and make money for your firm."

I agreed. "But," he said, "in government the man that is the hero is the man that knows how to take care of files, keep perfect files and accomplish nothing. Then he is a good government head."

I said, "Under these conditions, if you are just trying to get rid of me, that is fine, because if I have to work under these conditions, I don't want any part of you."

Mr. CRAMER. You do not agree with that philosophy, do you?

Mr. DiNATALE. I do not. I don't like to agree with it, but—I didn't mean to raise my voice—there certainly are some kinds of leanings toward that, I kind of think.

Mr. CRAMER. Well, it does not mean that anyone in a position of public trust does not have the duty to try to better the situation.

Mr. DiNATALE. Well, I think I proved that here, where—or certainly tried to prove it. I admit that I didn't know anything about roadbuilding. I was an administrator; maybe not a good one. I think I am, but in your eyes, perhaps I am not. That is perfectly all right.

Mr. CRAMER. I am not passing judgment on anybody.

Mr. DiNATALE. No, but I am saying you might think so, and you have every right to believe it, I suppose.

I knew nothing about the building of roads. As a matter of fact, since we are talking about land damages, I know less about that.

But there are people that run General Motors that have mechanics, and I am not quite sure that the head of General Motors doesn't know how to operate a lathe and so it was with me.

Nevertheless, he runs General Motors. I don't want to compare myself with someone up in that hemisphere, but, nevertheless, I am just trying to make a comparison.

Mr. GRAY. Any other questions? I do not want to cut the witness short, but the hour is late and we promised several people we would quit at 5:30.

Mr. SCHWENGEL. Mr. DiNatale, I would like to ask you a question.

Since you heard this testimony, and I am sure, followed the reports in the newspapers of your State, and so forth, are you prepared to present some suggestions on how the laws may be changed to avoid any renewal of this sort of thing in your State or any other State?

Mr. DiNATALE. May I respectfully submit a small recommendation?

Mr. SCHWENGEL. Yes. I would like to have it.

Mr. DiNATALE. Would you mind listening to it? Let me see how it sounds to you. This is what I have been trying to do:

I told you about this Stone & Webster. I also had a large auditing firm come in to see if they would set up a different kind of a system within the right of way particularly, and as a result of this, I got my ears knocked out from one end of the State to the other by the auditor of the State, because he said I was treading on his toes.

Well, I didn't think so. I thought I was doing what was right for the job, or, as you people say, for the people. I don't say for the people; I say for the job. The people are us.

I, incidentally, had that made. It is by Fanger & Sudell. You might have it here, or you can get it, and it shows a pattern from 1952 right straight up to this period.

And I think it proves out something. And here is one little thing, I don't know how it would sound to you, but I respectfully submit it to you.

It seems to me that the Federal highway program, under the Federal Bureau of Roads, should receive some kind of a new mandate. Right at the moment, the committee—the Federal Bureau of Roads—can allocate or apportion money to States if they feel that the department is capable of handling it.

Now, a new item: I believe that the negative mandate contained in the legislation, which directs the Federal Bureau of Roads to terminate relations or not to enter into working relations with an adequate State agency, should be revised. I suggest that in its place be submitted a positive formula.

I propose that there be created within the Bureau of Roads an Administrative Service Division, if you will, expertly staffed and that, of course, is very important.

It brings out what this gentleman—I can't see what your name is, sir, but you pointed it out very aptly—with expertly staffed, which can regularly review the operating procedures of State departments and propose new and better means to enable the States to discharge their responsibility under the Federal highway program.

Now, I don't think it is too big a thing. I think this could be handled, and this is only from one little boy of immigrant parents—

Mr. SCHWENGEL. I thank you.

Mr. DiNATALE. I will get my ears knocked out for making that statement.

Mr. SCHWENGEL. Mr. Chairman, I would like to say that I would like to speak to the gentleman afterward on some questions that I have.

Mr. GRAY. Any other questions? On behalf of the chairman, I want to thank all of the members of the committee for staying at this late hour.

The committee now stands adjourned until 10 tomorrow morning. Thank you.

(Whereupon, at 6:10 p.m., the committee recessed, to reconvene at 10 a.m., Friday, February 9, 1962.)

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

FRIDAY, FEBRUARY 9, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS,
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to adjournment, at 10:10 a.m., in room 1302, New House Office Building, Hon. Robert E. Jones presiding.

Present: Representatives Jones (presiding), Baldwin, Cramer, Johnson, Kluczynski, Scherer, and Schwengel.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. JONES. The committee will come to order. Mr. Beasley.

Mr. MAY. Mr. Chairman, Mr. Beasley apparently has not arrived yet. May we call the next witness, please?

Mr. JONES. Mr. Fred B. Dole.

Mr. Dole, will you stand while I administer the oath? Do you solemnly swear the testimony you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DOLE. I do.

Mr. JONES. Will you state to the committee your name, your address, and your occupation?

TESTIMONY OF FRED B. DOLE, SHELBURNE FALLS, MASS.; ACCOMPANIED BY GEORGE W. GOLD, COUNSEL, BOSTON, MASS.

Mr. DOLE. I am Fred B. Dole, Shelburne Falls, Mass.

Mr. JONES. And your occupation?

Mr. DOLE. Unemployed, or self-employed.

Mr. JONES. Are you attended by counsel today?

Mr. DOLE. I am, Mr. Chairman.

Mr. JONES. Will the counsel identify himself for the record?

Mr. GOLD. Thank you, Mr. Chairman. My name is George W. Gold. I am a practicing attorney and member of the bar of Massachusetts and of the Federal court, practicing at 11 Beacon Street, Boston.

Mr. JONES. Thank you.

Mr. GOLD. Mr. Chairman, may I have your permission to ask a question?

Mr. JONES. Yes, Mr. Gold.

Mr. GOLD. There are some unusual circumstances attendant to Mr. Dole's present position and I was wondering if—I know this is somewhat out of order—if I might be permitted to make a brief statement in connection with it.

Mr. JONES. Proceed.

Mr. GOLD. Thank you, sir. As late as last week Mr. Dole had every intention of appearing here today without counsel. He was prepared to unhesitatingly answer any and all questions to which he would have been capable of responding, but as of Monday last, the Federal grand jury in Boston presented two indictments against him, charging him with conspiracy in connection with the program that this committee is investigating at the present time—the very same issue.

To subject Mr. Dole to questioning at this hearing could conceivably seriously affect the outcome of the trial on the pending indictments. It is impossible to determine at this early stage of the proceedings in Boston the exact limits of evidential matter that might become pertinent to that case. Therefore, any response by Mr. Dole in this hearing could conceivably become the subject matter of a damaging admission, direct or indirect, that might be used against him at that trial.

I am not personally satisfied or convinced that Mr. Dole as a matter of law could limit his answers if he once embarks upon responding to any questions concerning the Massachusetts Department of Public Works and its activities. I am afraid that once he has answered any one question, that this might be deemed as a matter of law to constitute a voluntary elimination of his right to invoke any constitutional rights and privileges as to any subsequent questions.

Accordingly, in the interests of my client, and only because of this unexpected turn of events, I am compelled to advise him that he had best protect his rights by not answering any questions in this hearing. I say that with all the respect that I can express to this subcommittee. I recognize the problem and I recognize that Mr. Dole has a lot of information that would be of value and would be of no damaging effect to him as a practical matter, but, because of the pending indictments I am left in an untenable position, and I must so advise him.

Mr. JONES. Are there any questions by counsel?

Mr. CRAMER. What position is counsel advising his client to take? The client has to assert whatever rights he may have.

Mr. GOLD. I understand, Congressman, and I naturally would prefer—and I am not being facetious—if he were merely permitted not to testify and excused; but if he is compelled to invoke his constitutional rights he will of necessity do so.

Mr. CRAMER. Mr. Chairman, may I ask one other question?

Mr. JONES. Yes.

Mr. CRAMER. Could you advise the committee? Do you have a copy of the indictment?

Mr. GOLD. Yes, sir.

Mr. CRAMER. Would you submit that to the Chair for examination so we can consider it, and it can be considered in a ruling on your request?

Mr. GOLD. I think Mr. May has a copy of it himself, Congressman.

Mr. MAY. I do, Mr. Congressman. It is a very lengthy indictment and in essence it relates to the land taking with respect to the Joada Realty Co. in Lowell, Mass.

Mr. CRAMER. I ask the counsel then how many counts are there?

Mr. GOLD. There are two counts in it, Congressman.

Mr. CRAMER. And it relates to what subject matter?

Mr. GOLD. It relates specifically by designated name to a Joada matter.

Mr. CRAMER. I think that clarifies the record.

Mr. MAY. Joada is spelled J-o-a-d-a, Counsel.

Mr. GOLD. I believe that is it.

Mr. CRAMER. I think that indictment ought to be made an exhibit for the record.

Mr. JONES. Without objection, the indictment will be made a part of the record and will be designated as exhibit 19.

(The document referred to was marked for identification and received as exhibit No. 19 and is retained in subcommittee files.)

Mr. CRAMER. Is counsel going to ask questions now?

Mr. MAY. Yes, Congressman. Mr. Dole, were you formerly associate commissioner of the Massachusetts Department of Public Works?

Mr. DOLE. On advice of counsel I will stand upon the fifth amendment of the Constitution and decline to testify for the reason that any testimony I give might tend to incriminate me and might later be used against me in the trial of the indictments now pending.

Mr. MAY. Mr. Chairman, Mr. Constandy and I had a series of interviews with Mr. Commissioner Dole. Much of the information supplied to us by Commissioner Dole is essential in these hearings for a complete understanding of them. I would ask at this time that Mr. Constandy be sworn, Mr. Chairman.

Mr. JONES. Mr. Constandy, do you solemnly swear the testimony you will give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CONSTANDY. I do.

Mr. MAY. For the record, Mr. Constandy, will you identify yourself?

TESTIMONY OF JOHN P. CONSTANDY, ASSISTANT CHIEF COUNSEL OF THE SPECIAL SUBCOMMITTEE ON THE FEDERAL-AID HIGHWAY PROGRAM

Mr. CONSTANDY. My name is John P. Constandy. I am assistant chief counsel of this subcommittee. I reside at 4201 Cathedral Avenue, Washington, D.C.

Mr. MAY. Mr. Constandy, did you and I have a series of interviews with associate commissioner Mr. Fred B. Dole?

Mr. CONSTANDY. We did.

Mr. MAY. Was Mr. Dole associate commissioner of the Massachusetts Department of Public Works?

Mr. CONSTANDY. He was.

Mr. MAY. When was he appointed associate commissioner of the department?

Mr. CONSTANDY. Mr. Dole was appointed by then Governor Christian Herter in 1953, and filled a 4½-year unexpired term of his predecessor in that office.

Mr. MAY. Is that normally a 5-year term?

Mr. CONSTANDY. That is correct.

Mr. MAY. What had Mr. Dole done prior to becoming associate commissioner?

Mr. CONSTANDY. We were informed Mr. Dole from 1942 to 1953 served as register of deeds in Franklin County.

From 1933 to 1942 he was a State representative in the State legislature of the Commonwealth of Massachusetts.

Prior to 1933, he had operated a farm at Shelburne Falls, Mass.

Mr. MAY. Who was the commissioner of the department of public works at the time Mr. Dole became associate commissioner?

Mr. CONSTANDY. Mr. John Volpe was the commissioner, and he resigned in September 1956.

Mr. MAY. At that time and during that period, what were the functions of Associate Commissioner Dole?

Mr. CONSTANDY. Mr. Dole described his duties as attending various conferences, meetings; attending to matters in the waterways division, generally on Mondays.

On Tuesdays, matters pertaining to highways. He held frequent conferences with the commissioner. He attended bid openings and hearings relative to the highway program, which he would take turns with Mr. Volpe in attending. One would attend one time and the other would attend it another time.

Mr. MAY. What were Mr. Dole's functions with respect to the right-of-way division?

Mr. CONSTANDY. Mr. Dole stated to us that Commissioner Volpe assumed that he, Commissioner Dole, would keep his finger on right-of-way; that the right-of-way division did most of the groundwork, that is, the actual division, the right-of-way division, did most of the groundwork, and Mr. Dole would sign his name to documents necessitating the signature of a commissioner. The work itself was actually being done in the right-of-way division. He explained he would sign approximately 300 documents a week in that way.

Mr. MAY. Who was in charge of the right-of-way division at that time?

Mr. CONSTANDY. Mr. Lester Ellis was at that time the right-of-way engineer and as such was in charge of the right-of-way division.

Mr. Dole stated that he relied on the right-of-way division to do things right and not give him a bum steer. He stated that the right-of-way was Mr. Dole's responsibility, but Mr. Ellis had all of the personnel, and he ran it, and Mr. Ellis was responsible to Commissioner Volpe and not to himself, that is, to Mr. Dole.

Mr. MAY. What did Commissioner Dole have to say with respect to the functions of State employees within the right-of-way division?

Mr. CONSTANDY. Mr. Dole stated that Mr. Ellis directed the functions of State employees and was directly responsible for obtaining and reviewing staff appraisals on properties that were to be taken by the Commonwealth.

Mr. MAY. Mr. Chairman, here we have to point out we have had considerable testimony with respect to departmental appraisals—staff appraisals—as differentiated from outside fee appraisals; and we have heard that Mr. Ellis was responsible for the staff appraisals and for the reviewing of the staff appraisals. What did Commissioner Dole have to say with respect to the assignment of fee appraisers?

Mr. CONSTANDY. Mr. Dole stated that he was responsible for the assignment of fee appraisers and he handled this function personally. He pointed out no one else had authority to assign work to a fee appraiser.

Mr. MAY. We have also heard testimony, Mr. Chairman, that whenever a property was valued by the department, that is, by the department itself, in excess of \$2,500, one or two fee appraisers were assigned to that property. What did Commissioner Dole have to say with respect to the mechanics in the assignment of fee appraisers?

Mr. CONSTANDY. Mr. Dole stated that the right-of-way division under Mr. Ellis would send to him a form numbered E-28 which would identify the property on which it was necessary to obtain fee appraisals.

Mr. Chairman, I have here a form E-28, which reads at the top, "Expert Real Estate Appraisal Report." There are seven columns on the report and the information contained on the top would show the city or town in which the project was located, and would name the project and give the layout number, and the date of the layout.

Column 1 would contain the parcel number. Column No. 2 would indicate the owner of that parcel. Column No. 3 was for the department appraisal.

Mr. Dole explained that on occasion the department may have already had made its department appraisal, and that figure would then be contained on the form E-28. There were also times when the department appraisal had not yet been made, and that column would remain blank at the time he received it.

On the fourth column there is the title, "Recommended appraisal." It would be in that space that Mr. Dole would write the name of the person whom he was assigning as an outside or fee appraiser to appraise that property.

The fifth column is marked "Fee." We will have more to say about that later. The date sent to the appraiser would be a column reserved for later entry by an employee of the right-of-way division, who would therein indicate that the data or material necessary to be sent to the fee appraiser had been sent.

The last column is a remarks column. Mr. Dole explained that sometimes when the form E-28's came to him there would be nothing in that column. On other occasions there would be some description of the property to be taken. The purpose for that was that that information could be considered in arriving at the fee.

Having made the entry under the recommended appraisal column, Mr. Dole would return this form to the right-of-way division, Mr. Ellis' office, where a letter of assignment was typed, assigning each fee appraiser the properties that were listed beside his name shown on the form E-28. Mr. Dole entered the name of the fee appraiser assigned, and this form would go down to the right-of-way division, and at that place the letter assigning the fee appraiser would be made up. That letter would then be sent back to Mr. Dole and Mr. Dole would sign the letter assigning the fee appraiser to appraise that property or those properties. He would then send the letter signed back to the right-of-way division.

When the letter would come back to the right-of-way division the employee would enclose with the letter that data which the fee appraiser was entitled to have and mail the assignment to him.

MR. MAY. What did Mr. Dole have to say about the appraisal report after the fee appraiser had made his appraisal and completed his report?

MR. CONSTANDY. Mr. Dole stated that when the completed appraisal report was returned to the department, it would be returned to him. He would then retain it in a locked file until it was time to submit that parcel to the review board for their consideration. At that time the two fee appraisals generally, which would be contained within the locked file in Mr. Dole's office, would be taken out and Mr. Dole would request the departmental appraisal, generally through his secretary, he not sometimes seeing these himself, but either she or himself would then combine the two fee appraisals and the departmental appraisal and submit that to the review board for their consideration.

MR. MAY. What did Mr. Dole have to say with respect to the confidential part of these reports and figures?

MR. CONSTANDY. Mr. Dole stated, as borne out in the letter assigning the work to the fee appraiser, that that information contained was to be treated in a confidential nature. Mr. Dole stated he expected it would be, and that those figures would not be made available to anyone other than himself or, in due course, to the review board.

MR. MAY. Did Commissioner Dole state that he reviewed the fee-appraisal reports?

MR. CONSTANDY. No. Mr. Dole stated that he did not review the fee appraisals. He stated that he had never done any appraisal work and has no experience in the appraising field and is not qualified in that field. He is not qualified to make a critical review of any appraisals that were performed by someone else, or anyone.

MR. MAY. Mr. Chairman, as we see from the testimony, no one at any time reviewed the fee-appraisal reports prior to their submission to the review board. What did Mr. Dole have to say with respect to his feeling about the review board?

MR. CONSTANDY. Mr. Dole stated he was an administrator and felt it was the responsibility of the review board to review and check the appraisals. He did not consider that to be his responsibility.

MR. MAY. Mr. Chairman, we have now seen that Commissioner Dole would assign the fee appraisers and they would submit their reports to him. Since Commissioner Dole was not qualified to review appraisal reports and, in fact, did not do so, he was also not qualified to judge the competency and worth of the fee appraisers.

Did Commissioner Dole have comments to make with respect to the review board advising him concerning the competency and worth of the fee appraisers?

MR. CONSTANDY. Yes. Mr. Dole stated that unless he was informed by the review board that a particular fee appraiser was doing unacceptable work or was submitting inadequate appraisal reports, that he, Commissioner Dole, assumed the fee appraisers were competent and were doing their work satisfactorily. There were times that the review board advised Mr. Dole that a particular fee appraiser's work was not satisfactory, and Mr. Dole did on occasion stop giving work to that particular appraiser; but he mentioned

that these occurrences were not common. Mr. Dole emphasized that by saying it was a rare occasion that that happened, and you could count the number of times that it happened over the years.

Mr. MAY. Did we ask Commissioner Dole to name those appraisers, those fee appraisers, whom he considered qualified and competent to do appraisals on more complex properties, such as commercial and industrial properties?

Mr. CONSTANDY. Yes. Mr. Dole stated that he had six to eight appraisers on his list who were qualified to make appraisals of industrial properties, and he named those people. Among them were Mr. James Alphen, Mr. William Jacobs, Mr. Edward DeSimone, Mr. George Cronin, plus three or four others.

Mr. MAY. Did Commissioner Dole mention to us that after becoming associate commissioner he began to receive certain requests relating to the assignment of the fee appraisal work?

Mr. CONSTANDY. Yes; he did. He said that this began at the time he began fulfilling that function, and it continued thereafter; that he would receive requests to assign appraisal work to various individuals; that these requests came from various sources; that they came from other people in the department of public works; they came from legislators; they came from friends and acquaintances; they came from attorneys. This practice had continued through the years, and Mr. Dole stated that he has done what he could to comply with the requests, particularly when the requests came from State officials or legislators.

Mr. MAY. Did Commissioner Dole state what his usual practice was when it came time to assign work to a person who was a stranger to him, or who was not already contained on his list?

Mr. CONSTANDY. Yes. Mr. Dole explained that when a request would be made to him to assign work to a particular individual, that he would send a letter to that person asking for his qualifications. If the qualifications appeared adequate to him—Mr. Dole—he would generally assign appraisals to the individual and, thereafter, if the review board did not complain about the appraisal reports of that individual, the chances were that additional work would continue to be assigned to that person.

Mr. MAY. Mr. Chairman, this can become a major point in the hearings. We have had testimony thus far showing that Commissioner Dole would assign fee appraisal work to fee appraisers. Commissioner Dole received requests from many sources suggesting that certain people be given fee appraisal work. Commissioner Dole would send out a letter normally asking for the qualifications. The stranger would submit a list of qualifications. If they appeared proper and adequate, then Commissioner Dole would assign appraisal work. The stranger would do the appraisal work and submit the appraisal reports, and Mr. Dole would review it, and the appraisal reports would go to the review board. If the review board did not comment upon the incompetency of the individual normally, he would receive additional work. He could continue to get work despite the fact that, as we have already seen, he was not competent and qualified.

Mr. CRAMER. Mr. Chairman, may I ask counsel to ask the assistant counsel a question?

Mr. JONES. Yes.

Mr. CRAMER. In discussing these people, the groups of people you just mentioned, who he indicated submitted names of people as appraisers, did you ask him specifically who made any such requests? Did he name any names, or did you ask him to name any names?

Mr. MAY. Commissioner Dole give us examples of the type of people who would suggest that certain other people be given fee appraisal work. As a matter of fact, Mr. Dole called them sponsors. Mr. Dole gave examples of sponsors, such as Anthony DiNatale and Edmund C. Sheridan and Theodore A. Glynn and John Volpe, and the Republican city committee and other examples such as that.

Mr. Dole pointed out that this has been the practice throughout the years beginning in 1953, and he said that these requests came from legislators from both major political parties, and that is the way he explained that situation.

Mr. CRAMER. Did Commissioner Dole explain how he wrote down the list of fee appraisers?

Mr. MAY. Yes, Mr. Congressman. We have Mr. Dole's more current lists. On those lists we have the names of the appraisers and the names of the sponsors in the main. We do have the lists.

Mr. CRAMER. May I ask another question relating to my previous question?

After getting this information, did counsel attempt to make available or have Mr. Dole make available, or Mr. Sheridan, the letters of recommendation, or otherwise, for these appraisers, and further go into detail as to who specifically recommended Mr. Schwartz, for instance, and who recommended Mr. Collins, and who recommended the bad fee appraisers? Was anything done to try to establish that?

May I see the lists?

Mr. MAY. Mr. Constandy, has the commissioner explained how he broke down the list of fee appraisers which he maintained?

Mr. CONSTANDY. Yes; he did. He had broken down the list by geographical area: Boston, North Shore, South Shore, and the western part of the State. In a given locality he attempted to use fee appraisers who lived there, or were familiar with conditions in that locality.

Mr. MAY. Were there times when Commissioner Dole would be requested by a fee appraiser himself to be assigned to a particular property?

Mr. CONSTANDY. Yes; there were.

Mr. MAY. Do you have an example of that, Mr. Constandy?

Mr. CONSTANDY. Yes. I have a letter on the stationery of the Waldorf-Astoria Hotel, Park and Lexington Avenues, in the city of New York. It is dated August 9, 1957, and is addressed to Mr. Fred B. Dole, Associate Commissioner of Public Works, 100 Nashua Street, Boston, Mass.

DEAR FRED: I learned out in the field that there will be another big appraisal here where I am doing some work now that will tie in with some of the appraisals that I am now doing—Covich Realty Corp., Inc., Harcon Corp., Downes Lumber Co. The name of the taking is, I believe, Banquer Realty Co., Inc. I would like to have this appraisal, if possible.

With kindest personal regards.

Sincerely yours,

BILL JACOBS.

The return address is typed, 28 Charles Street, Boston 14, Mass.

Mr. MAY. Mr. Kopecky has already been sworn, Mr. Chairman. Mr. Kopecky, was Mr. Jacobs actually assigned to the Banquer property?

Mr. KOPECKY. Yes; he was.

Mr. MAY. Mr. Jacobs has already been introduced into the hearings, Mr. Chairman. Mr. Constandy, did Commissioner Dole mention anyone in particular who spoke on Mr. Jacobs' behalf?

Mr. CONSTANDY. Mr. Dole recollected that Theodore A. Glynn probably spoke to him on more than one occasion on behalf of Jacobs.

Mr. MAY. Was Mr. Dole able to be or to mention specific situations with respect to Mr. Glynn?

Mr. CONSTANDY. No; he was not. He stated that generally.

Mr. MAY. Did Commissioner Dole mention who succeeded Mr. Volpe as commissioner?

Mr. CONSTANDY. Yes. Mr. Carl Sheridan succeeded John Volpe as commissioner of the department of public works, I believe in October 1956.

Mr. MAY. Did the commissioner mention who succeeded Carl Sheridan as commissioner of the department of public works?

Mr. CONSTANDY. Yes. In September 1957 Anthony DiNatale succeeded Carl Sheridan as the commissioner of the department of public works.

Mr. MAY. Did Commissioner Dole mention that his functions remained unchanged through the years under the different commissioners?

Mr. CONSTANDY. Yes. Commissioner Dole stated that under Mr. DiNatale the right-of-way division continued to be his responsibility, and the assignment of fee appraisers continued to be solely his work, that is, his responsibility.

Mr. MAY. What did Commissioner Dole have to say with respect to the assignment of fee appraisers by him during 1958?

Mr. CONSTANDY. Mr. Dole stated that sometime in 1958 he became aware that his assignments of fee appraisers were being changed by other people. This initially came to his attention when he received appraisal reports from fee appraisers on particular properties which he had not assigned to that appraiser, and which had been assigned to the man submitting the report, by someone else.

In other words, Mr. Dole explained when he made up his form E-28 on a particular property, he would assign a certain fee appraiser to it. To his surprise, he learned later that when the appraisal report came back to the department on the property, it was not the appraisal report of the person whom he had assigned, but it was the appraisal report of someone else.

Mr. MAY. Did Commissioner Dole mention that he then spoke about the matter to Mr. Herbert L. Dodge, who was at that time assistant right-of-way engineer of the right-of-way division?

Mr. CONSTANDY. Yes. Mr. Dole stated he had a conversation with Herbert L. Dodge and he learned from him that certain assistants to Commissioner DiNatale were obtaining the E-28 forms from Mr. Dodge after Commissioner Dole had made his assignments on the form and had returned it to the right-of-way division. Occasionally changes in Commissioner Dole's assignments were made. The assist-

ants to the commissioner who appeared to have an interest in the fee appraisal assignments were Edmund C. Sheridan, Michael F. Kelly, and George C. Toumpouras.

Mr. MAY. Mr. Chairman, as we have already heard in the testimony, none of those individuals mentioned had any authority or responsibility over the right-of-way division. Commissioner Dole mentioned to us that he had complained to Commissioner DiNatale about the changes being made in Commissioner Dole's original assignments to fee appraisers?

Mr. CONSTANDY. No. At that time Mr. Dole stated that he did not complain to the commissioner or the assistants, and at that time he took no action about the changes he found being made.

Mr. MAY. What did Commissioner Dole have to say with respect to the events which occurred about in the spring of 1959?

Mr. CONSTANDY. Mr. Dole stated that at that time Mr. George Toumpouras was appointed associate commissioner to the department of public works. As associate commissioner, Mr. Toumpouras' responsibilities were matters other than right-of-way. Mr. Dole continued to be responsible for the right-of-way division, and Mr. Toumpouras had no authority in that division. Mr. Dole continued and stated that shortly after Mr. Toumpouras became the associate commissioner, Mr. Toumpouras came to him and asked that the E-28 forms be sent to him, Commissioner Toumpouras, after Mr. Dole had made his assignments, but before they were returned to the right-of-way division. Mr. Dole stated that Commissioner Toumpouras told him in essence, "I would like to see the letters before they are sent out so I can check them."

Mr. MAY. Did Commissioner Dole mention that he recognized Mr. Toumpouras' position at that time?

Mr. CONSTANDY. Yes. Mr. Dole stated that now Mr. Toumpouras was an associate commissioner, like himself, and he felt it was inappropriate for him to deny the request to someone who had equal standing in the department.

Mr. MAY. What did Commissioner Dole state that he said to Mr. Toumpouras at that time?

Mr. CONSTANDY. Mr. Dole said that he told Mr. Toumpouras, "If you want to offer substitutes, be sure they are qualified."

Mr. MAY. So after that conversation with Mr. Toumpouras, what was the practice on the part of Commissioner Dole?

Mr. CONSTANDY. From that time on Commissioner Dole said it was his practice to make his assignments on the E-28 forms as he had previously done, and then forward them to Commissioner Toumpouras, rather than as he had before that, sent them directly to the right-of-way division. Eventually the E-28 would be returned to Commissioner Dole, who would then return it to the right-of-way division as he had done before, where the letters of assignment would be typed.

Mr. MAY. While that practice was in effect, did Commissioner Dole become aware that changes were being made in his original assignments?

Mr. CONSTANDY. Yes. Commissioner Dole stated upon receiving the E-28 forms back from Mr. Toumpouras he noted that changes had been frequently made in the assignments which he, Commissioner Dole, had made; and Dole stated that he accepted those changes.

Mr. MAY. Mr. Chairman, as we have seen, as of that time, in effect, Commissioner Dole had lost complete control over the assignment of fee appraisers. Also, Mr. Constandy, did Commissioner Dole mention that prior to the establishment of that new practice, that individuals such as Toumpouras, Mr. Kelly and Mr. Sheridan, had previously requested that certain appraisal work be given to certain fee appraisers?

Mr. CONSTANDY. Yes. Commissioner Dole explained that he did thereafter receive requests from the three people mentioned that he assign some work to particular fee appraisers.

I have, Mr. Chairman, what are perhaps samples of those requests as they were submitted in written form to Commissioner Dole by Mr. Toumpouras and Mr. Kelly and Mr. Sheridan. These are simply samples, and the ones I have before me are fairly typical.

This is addressed from Michael F. Kelly, attention of Commissioner Dole. Subject: Appraisal work. This particular one is dated July 22, 1958, and it reads as follows:

I would like to submit the name of (blank) to be placed on a list for appraisal work.

Signed Michael F. Kelly. This is one. There are others of this sample that we have as it relates to Mr. Kelly.

Here is one dated July 22, 1958, and one dated July 28, 1958. There are two of them on two separate sheets dated March 24, 1959, and there is another dated March 31, 1959.

Mr. CRAMER. Mr. Chairman, may I ask a question?

Mr. JONES. Mr. Cramer.

Mr. CRAMER. We have previously heard the testimony of Mr. Schwartz and Mr. Collins and some other fee appraisers and, as I understand it, will probably have more at a future date relating to appraisals that are obviously out of line, if not fraudulent in fact.

Could you, in going through these lists, indicate which of these three people recommended which of the appraisers involved? It seems to me that is the pertinency of it.

Mr. CONSTANDY. Yes, it is pertinent, Mr. Cramer. At the moment, if you will permit me just to continue the examples from Commissioner Toumpouras to Mr. Sheridan, I would then look through the list and see who did in fact recommend or sponsor the people that you suggested.

Mr. CRAMER. All right.

Mr. CONSTANDY. There are again, only as a sample, certain letters from Mr. George C. Toumpouras, assistant to the commissioner, which bear the same form as the letter which I had just read. In this sampling there are nine people's names suggested that work be given to as fee appraisers—four on April 10 of 1958; one on June 25, 1958; and four on June 26 of 1958.

There again is a sample of memos from Mr. Edmund C. Sheridan to Mr. Dole, bearing a somewhat different form. The first document is dated January 17, 1958, and addressed from Mr. Sheridan to Mr. Dole, the subject being appraisers, and thereafter it lists the names of 10 people with their addresses. The letter is signed Edmund C. Sheridan, administrative assistant, by James Landers.

There is a notation on the bottom of that that a particular man should be assigned to appraisals in a particular area, that is, Springfield-Holyoke and Longmeadow.

The second document bears the names of three other fee appraisers, simply with no other notation thereon but names and addresses. The last sheet is simply a list of 20 names and addresses with a marking above them, "Appraisers" and written in longhand at the bottom, I believe in Mr. Dole's handwriting, the notation, "from Ed Sheridan." It is noted that on that list appears the name of Mr. Ernest Collins, Main Street, Fall River.

Mr. MAY. Mr. Chairman, I would like to point out that as we have seen some of these requests were dated 1958 and others early in 1959. As of that time these individuals were sending to Commissioner Dole requests that certain people be assigned as fee appraisers, and Commissioner Dole told us that he complied with these requests as much as he could. It was after the practice began of submitting the E-28 forms, the original assignments, to these certain people, which at least gave them an opportunity to assign specific appraisers to particular properties.

Mr. CRAMER. And on that point, counsel, do you have any information as to who had the responsibility of making those assignments? That is equally important I believe. Who had the responsibility of assigning these people you just mentioned? He said they had been assigned. Who assigned them to a specific job?

Mr. MAY. Well, as we have heard, Commissioner Dole, according to the breakdown within the department of public works, had the responsibility of making assignments, but as we have seen other people were actually making particular assignments. We will have more to say about that shortly.

Mr. CRAMER. Will you have evidence as to who actually makes the assignments in the department?

Mr. MAY. We have some evidence along that line.

Mr. CRAMER. In other words, who assigned Schwartz, and who assigned Collins, and some of these other people?

Mr. MAY. Yes. We will take care of that shortly. Mr. Constandy, did Commissioner Dole mention that he was upset about the delays which would be brought about when he forwarded the E-28 form to Commissioner Tounpouras and Mr. Kelly and Mr. Sheridan?

Mr. CONSTANDY. Yes, he did. He pointed out that since no assignment letters could be sent out until the E-28 forms were returned, first to him and then to the right-of-way division, that any delay in returning the E-28 form to him subsequently caused delay in the State obtaining the appraisals. Those delays did happen and Mr. Dole could recall, as he related to us, that he spoke to Commissioner Tounpouras on one occasion and to Edmund Sheridan on another, pointing out it was an injustice to the property owners that the delay in returning these E-28 forms to him. The letters of assignment could not be sent out and the appraisals made.

Mr. MAY. So we have seen, Mr. Chairman, this sort of a practice when the E-28 forms were delayed in being returned to Commissioner Dole, delayed the highway program. We have heard yesterday that bulldozers were on the project down in Attleboro nudging the houses when in fact no appraisal assignments had been made in Attleboro. Nobody had appraised the properties and nobody was in a position to negotiate with the property owner.

What did Commissioner Dole have to say about the project in Attleboro?

MR. CONSTANDY. Commissioner Dole stated that one of the projects on which there was a delay was in fact the one in Attleboro in about June 1959 when a construction contract was advertised for bids. It was actually a contract to go out and commence construction of the highway. Commissioner DiNatale was in Europe. Mr. Dole, then Commissioner Dole, went to Mr. Ricciardi, then deputy commissioner, and informed him that no takings had been made, that is, the State had not acquired the property, and the fee appraisers had not even yet been assigned. Mr. Dole immediately assigned fee appraisers on the E-28 forms covering some 100 parcels and gave the E-28 forms containing the notice of assignment to Commissioner Toumpouras. Mr. Dole stated that about a week later he asked Commissioner Toumpouras to return the E-28's and Commissioner Toumpouras told him, "We will try to get it for you. We have to check it some more."

Commissioner Dole stated that more weeks passed and they were finally returned after approximately 10 weeks' delay.

MR. MAY. When those E-28's on the Attleboro project were returned to Commissioner Dole, had changes been made in the original assignments made by Mr. Dole?

MR. CONSTANDY. Yes. Commissioner Dole said they had; that certain properties which Commissioner Dole had assigned to particular fee appraisers were reassigned to other people and that Damort was one of them.

MR. MAY. Would you explain what had taken place, Mr. Constandy?

MR. CONSTANDY. Yes. I have before me three of the E-28 forms which relate to the project we have been discussing in Attleboro. The first form E-28 is in six pages. It bears the notation at the top, typed, "F. B. Dole." It reads, "City of Attleboro, Route 95, Layout 4877, dated 7/28/59." This form was prepared by Mr. R. E. Potter, an employee of the department of public works then assigned to the Attleboro project. He made it up on September 9 of 1957. This was Mr. Dole's copy of this form E-28. It bore the parcel numbers. It bore the owners names, and I will read those at least as to the first eight, since we have discussed them before: Charles N. and Helen G. Logan, The H. & B. Building Corp., Louise L. Charpentier, Jencks-Adams, Damort Land Corp., Donald W. and Mary Ellen Boardman, Omar A and Jeanne C. Martel, Estate of Alfred James Holden.

On this form, under the portion reading, "Department Appraisal," there was indeed entered the appraisal figure at that time of the Department of Public Works. This is Commissioner Dole's E-28.

Under "Recommended Appraiser" it bears the notation for those parcels I have read, the names of Collins and Schwartz. There is next to that the notation, "Replacing Fraser and Coyle." The original entry made by Commissioner Dole was not in fact Collins and Schwartz. The names he had put there had been erased, and there are indications which we will see that the names which in fact were there originally were Fraser and Coyle.

MR. CRAMER. Are we going to have evidence as to who made the change and who assigned Collins and Schwartz?

MR. CONSTANDY. We hope to reach that point as we go through this, Congressman. I have before me a second E-28 form and it is our

understanding, in the normal course of events, after Commissioner Dole made his entries on his E-28 and it is returned to the right-of-way division that for office purposes an employee in the right-of-way division subsequently makes up an additional E-28 form on those same parcels. On this form, which was the office copy in the right-of-way division, there does appear for the properties which I have listed, the names of Coyle and Fraser under the "Recommended Appraiser."

Written next to them and in longhand, they having been crossed out—Coyle and Fraser—appears the names Schwartz and Collins.

Mr. CRAMER. I ask you again, counsel, are you intending to indicate by whose authority those names were changed?

Mr. CONSTANDY. We do hope to reach that point.

Mr. CRAMER. All right. It is quite interesting to me, who has enough influence and authority to override Mr. Dole's recommendation? He is the one supposed to be in charge and I hope that the record will show that.

Mr. SCHERER. That is one of the primary purposes of the investigation.

Mr. CRAMER. I would think so. I want to make sure we don't leave that hanging someplace.

Mr. CONSTANDY. If you will bear with me just a minute. This is a little involved.

Mr. CRAMER. I know it is and I am trying to help straighten it out. Go ahead.

Mr. JOHNSON. Proceed.

Mr. CONSTANDY. We had first the E-28 of Commissioner Dole. On it there appears the erasure and the names written over it of Collins and Schwartz. The proof of what his initial entry was, was that the E-28 was made up in the right-of-way division based on his original entry. The E-28 from the right-of-way division bore the names Coyle and Fraser, and they were scratched out and the names Schwartz and Collins put in next to them.

I remind you again they are in Commissioner Dole's writing. Next to the names on the form E-28, Collins and Schwartz, appears the notation, "replacing Fraser and Coyle."

We have a third E-28 form. This one bears a notation at the top, "commissioner's office." We find on it parcels listed, they being eight in number. On the first one the name written in is Schwartz and Collins and on the other seven parcels there appear ditto marks.

Mr. CRAMER. Who is commissioner at this time? Whose copy is this?

Mr. CONSTANDY. The actual commissioner was Commissioner DiNatale and we will have testimony to the effect that at the time that the two E-28's were made up, one was sent to Commissioner Dole and bore his name and the other was sent to the commissioner's office and bore that title. It did not in fact go to Commissioner DiNatale but it went then to others outside of his office, they being Mr. Kelly, Mr. Sheridan, and Mr. Toumpouras.

Mr. CRAMER. The commissioner's office is where Mr. Sheridan was working. Is that right?

Mr. CONSTANDY. That is correct.

Mr. CRAMER. And Mr. DiNatale yesterday said he was a patronage appointment.

Mr. CONSTANDY. That is correct. Further than that we have shown this E-28 bearing the notation, "the commissioner's office," went to Mr. Edmund Sheridan, and Mr. Sheridan will explain at the time he testifies whether or not the writing on this form E-28 is his.

Mr. SCHERER. It will help us to understand a little better, counsel, if you will tell us at this point, as Mr. Cramer suggested, what your investigation disclosed. Now is this Mr. Sheridan's writing or is it not his handwriting?

Mr. CRAMER. Or was it authorized by him?

Mr. SCHERER. It will help us a little bit.

Mr. CONSTANDY. Yes.

Mr. SCHERER. To understand what transpired.

Mr. CONSTANDY. This, may I say, has not been easy.

Mr. SCHERER. Well, I agree.

Mr. CONSTANDY. We found these documents and had the chore of putting them together and attempting to reconstruct what did happen. But it is necessary to take it, I regret to say, step by step, so it will be as enlightening to you as we feel it has been to us. We did speak to Mr. Sheridan and Mr. Sheridan did say at the time we spoke to him that the handwriting appearing on this copy of the form E-28 was, in fact, his own.

There are a second group of documents which bear erasures on the Form E-28's. As you will recall the normal process when the E-28 was made up by Commissioner Dole was that it would go then to the right-of-way division where letters making those assignments would be prepared. Having been prepared they then would be returned to Commissioner Dole for his signature.

I have before me now certain letters of assignment relating to these properties which were in fact prepared. I have first a letter addressed to Mr. Ernest B. Collins.

Mr. SCHERER. Could I interrupt again?

Mr. CONSTANDY. Yes, sir.

Mr. SCHERER. Maybe I am wrong but are you in a position to say at this time what your investigation disclosed as to who made these changes?

Mr. CONSTANDY. Yes. I can tell you right now.

Mr. SCHERER. The unauthorized changes. Then you could supply the other things as you go along. It is just like counsel making an opening statement to the jury, and then the jury understands what he intends to prove and then you go ahead and prove it. Then we can understand this a little better.

Mr. CRAMER. He said Sheridan personally signed it.

Mr. CONSTANDY. I will go over this, if I may, one more time. The change on this copy marked "F. B. Dole," was in fact made by F. B. Dole. It originally read "Fraser and Coyle." Those names were erased. The names of Collins and Schwartz were put in his E-28 by Mr. Dole himself. But so that there will be a complete record of that change and an indication he himself had already assigned someone else, he added the notation, "Replacing Fraser and Coyle."

Mr. CRAMER. Who told him to replace them?

Mr. SCHERER. Could you disclose now how it happened that Dole himself changed it? What influences were brought to bear? Who caused it?

Mr. CRAMER. What caused it?

Mr. CONSTANDY. Can I just point this out?

Mr. SCHERER. No. Answer the question. Can you answer my question?

Mr. CONSTANDY. No, I cannot.

Mr. SCHERER. If you don't know, you don't know.

Mr. CONSTANDY. I don't know, but I believe that I can submit to you sufficient evidence, step by step, where you yourself can draw the conclusion, if you would like to.

Mr. SCHERER. Well, what conclusion do you draw?

Mr. CRAMER. That's a perfectly good question. We are here shadow-boxing in the dark.

Mr. CONSTANDY. Not at all.

Mr. CRAMER. We asked you a specific question. We want to know what your conclusions are. We are entitled to know it. Who suggested that the change be made? That is the question. You say you are satisfied and the evidence will satisfy us. All right. But who are you satisfied that the evidence shows did it?

Mr. BALDWIN. Mr. Chairman, can I be recognized?

Mr. JOHNSON. Mr. Baldwin.

Mr. BALDWIN. I think we should allow the investigators to continue with the evidence on the course they want to pursue. They say the evidence will be developed. We are going to be here anyway. We should allow them to develop the evidence and draw our conclusions. That is what we are here for.

Mr. CRAMER. It will be at least another week until we go into other routes.

Mr. BALDWIN. That's perfectly all right. We'll be here all along.

Mr. CRAMER. I see no reason why a committee member has to shadowbox and guess what is coming next if counsel has the information. If counsel were not testifying that would be something else, but he is the one who is putting into the record what the facts are. He is the one testifying. If he were not testifying I would not raise the question, but I would like to know where we are going here on the basis of counsel's testimony.

Mr. MAY. Mr. Chairman—

Mr. CRAMER. He said he has come to a conclusion and I would like to know what that conclusion is. He said Sheridan did in fact make personally one of the changes. Did Sheridan order this change?

Mr. JOHNSON. Mr. Cramer, will you yield for counsel to make a statement at this point?

Mr. CRAMER. Yes.

Mr. MAY. We spent a great deal of effort on this matter, Mr. Chairman. It is a complex matter and must be clearly understood. We gave this a considerable amount of thought. We intend to use this approach as a step-by-step revelation of exactly what took place, and Mr. Constandy is in the process of this.

Mr. JOHNSON. The Chair will order the counsel to proceed. Mr. Constandy, go on with your testimony.

Mr. CONSTANDY. Yes, sir. Believe me, I am not attempting to make this difficult.

Mr. SCHERER. What I am trying to say is—the Chair ruled, but all I am trying to say is this: You admit this is a highly complex and

complicated matter to which you have devoted hours of time. You are smarter than I am and you can understand it. All I want to know is the same thing as when you make an opening presentation to the jury. You tell them what you expect the evidence to show. Then, as you present the evidence the jury—and we are the jury in this case—can better understand what you are talking about.

Mr. JOHNSON. Congressman Scherer, will you let the counsel proceed here? I think we are all going to be here a week on this, or better, and we will have an opportunity to draw our conclusions after all of this testimony is in. If certain people have to leave during this next week, that is too bad.

Mr. CRAMER. We don't have hearings next week.

Mr. MAY. This matter will be cleared up in not too many moments.

Mr. SCHWENGEL. I hope this does not set a precedent that we have to stay with all along. I am willing to yield to the Chair's ruling and let counsel proceed, but I would like to have it understood there is a special reason for my question, and it will be revealed later.

Mr. JOHNSON. Proceed.

Mr. CONSTANDY. I think it might simplify things if I pointed out that at this time there were in fact two E-28's in existence at the same time. One of those E-28's went to Commissioner Dole, and on it he made his assignment. I believe, since you asked my opinion, that unbeknown to him the other E-28 was submitted, as it reads, to the commissioner's office, and on the copy that went to the commissioner's office Mr. Edmund Sheridan make the entry, "Schwartz and Collins."

That E-28 stayed in their file. Mr. Dole's original E-28 in the usual course of business went to the right-of-way division, and from it a clerk in the office prepared an office copy bearing the same information which his original had, that he had assigned Mr. Coyle and Mr. Fraser to these properties. As a result of her having received Commissioner Dole's E-28 assigning Coyle and Fraser, there were prepared again in the usual course of business the letters assigning those parcels to Mr. Coyle and to Mr. Fraser.

Subsequently Mr. Sheridan's E-28 became apparent, and the letters, which by this time had already been made up, were thereafter changed. The assignments which had been made originally to Mr. Coyle were then assigned to Mr. Collins, and those assignments which had been originally given to Mr. Collins were assigned to Mr. Coyle.

We find the same situation with regard to Mr. Fraser and Mr. Schwartz. Those cases which had been originally assigned to Mr. Fraser were reassigned to Mr. Schwartz. Mr. Schwartz' original assignments were made to Mr. Fraser.

I have here the letter addressed to Mr. Ernest E. Collins, 426 Academy Building, Fall River, Mass., assigning certain parcels in Attleboro for a fee of \$1,650. There is written on that letter at the top a note which says:

Changed to William Coyle, 127 Main Street, Seekonk, Mass.

I have here a copy of the original assignment to Mr. Coyle, where he was assigned properties in Attleboro on layout 4877 for a fee of \$2,050. There is attached to that document a note which says:

Changed to Ernest Collins, Main Street, Fall River.

I also have the second letter of assignment made up after Mr. Sheridan's copy of the E-28 came back to Mr. Dole's office, wherein Mr. Coyle was assigned those parcels Mr. Collins had been previously assigned for \$1,650 and Mr. Collins was assigned those parcels in Attleboro we have been talking about, which would be \$2,050. So they swapped. Mr. Collins was assigned Mr. Coyle's, and Mr. Coyle was assigned Mr. Collins'.

The original assignment letters on these parcels never were mailed. The assignments never were made. That comes about because Mr. Edmund Sheridan's E-28 came into the picture and changed what would have been the normal course of events in the assignment of these parcels to those people originally assigned.

I have the balance of that same thing in connection with the switch between Mr. Schwartz and Mr. Fraser. Mr. Fraser was originally assigned the eight parcels in Attleboro we have been talking about, including Damort, for a \$2,050 fee. On the original assignment to Mr. Fraser, which letter in fact never was mailed, appears the note:

Change to Joseph Schwartz, 931 Madison Street, Fall River, Mass.

Mr. Schwartz, in turn, on his original letter of assignment, which was never mailed, bears the notation:

Change to Fraser, 55 Seville Road, Quincy.

So Mr. Fraser's original assignments were thereafter given to Mr. Schwartz, and Mr. Schwartz' original assignments were given to Mr. Fraser.

I think that the existence of these documents bears out the story Mr. Dole had given us to the effect that he did in fact make assignments on these parcels; that he did in fact send his E-28 to the right-of-way division to cause certain letters to be drawn to make those assignments he had made. Those letters came into existence. Those letters were later transmitted back to Mr. Dole, and it is in Mr. Dole's handwriting we find that changes have been made.

Mr. Dole explains that by saying that the E-28 from Mr. Sheridan bore different assignments, and he thereafter changed his original assignments to those assignments as indicated on these eight parcels by Mr. Sheridan.

Mr. CRAMER. Counsel, at this time Mr. Sheridan was in Mr. DiNatale's office, and was his position then in charge of personnel, or assistant to Mr. DiNatale? You know he changed his position in that interim. Which position was he holding in 1958?

Mr. CONSTANDY. At that time he was assistant to the commissioner. Is that clear, Mr. Scherer?

Mr. SCHWENGEL. Could he speak for the commissioner then? He was acting under authority of the commissioner, wasn't he?

Mr. CONSTANDY. I wouldn't say that. No.

Mr. CRAMER. He is just an accessory.

Mr. MAY. We had testimony yesterday from the commissioner stating clearly on the record that Mr. Toumpouras, Mr. Kelly and Mr. Sheridan had no responsibility in or interest in the right-of-way division.

Mr. CRAMER. So far as he knew. It is obvious Mr. Sheridan did.

Mr. MAY. Yes, but in the operations of the department they had no business. They were injecting themselves into the right-of-way division operation.

Mr. CRAMER. They were sticking themselves in where they didn't belong, for obvious reasons.

Mr. JOHNSON. Are there any other questions on that phase of the testimony? If not, proceed, Mr. May.

Mr. MAY. Mr. Chairman, may we make those documents exhibit 20-A through G?

Mr. JOHNSON. So ordered.

(The documents referred to were marked for identification and received as "Exhibits 20-A through 20-G," and are retained in sub-committee files.)

Mr. MAY. Mr. Constandy, did Commissioner Dole explain what the mechanics would be whenever the review board, after considering initially a given taking, requested an additional appraisal?

Mr. CONSTANDY. Yes. Mr. Dole stated that whenever the review board sought another appraisal on the property, that is, they had once had before them the appraisals originally made on a parcel and at their discretion decided they needed yet another appraisal, that they would normally request a new appraisal assignment of Mr. Dole, and he would assign someone in the same fashion that the original assignments were made.

Mr. MAY. Already in the hearings we have had testimony that Mr. C. H. Lawton, Jr., from Rhode Island, was assigned to make the final appraisal on the Damort property. Did Mr. Dole explain his function with respect to the assignment of Mr. Lawton?

Mr. CONSTANDY. Commissioner Dole stated that at the time C. H. Lawton, Jr., was assigned to appraise the Damort property on January 29, 1960, he, Mr. Dole, was away from the office on a trip to the Midwest. He stated that Mr. Lawton's name was not on any assignment list of fee appraisers, and that Mr. Lawton was completely unknown to Mr. Dole.

Mr. MAY. So Commissioner Dole said he did not assign Mr. Lawton to make an appraisal for the Commonwealth?

Mr. CRAMER. Well, who did assign him, Counsel?

Mr. MAY. I would like to establish in the record Commissioner Dole stated that he did not assign Charles Lawton to make an appraisal for the Commonwealth.

Mr. CRAMER. All right. Do you have any evidence as to who did?

Mr. MAY. Did we ask Commissioner Dole if he knew who did?

Mr. CONSTANDY. We did ask Commissioner Dole, and he stated that he did not know who did that.

Mr. CRAMER. Is there any evidence in the record as to who did it?

Mr. MAY. We have already received testimony from Mr. Lawton as to that. Mr. Harney told him he would get the assignments, and we have some papers relating to that assignment. Would you comment on that, Mr. Constandy?

Mr. CONSTANDY. Yes, sir. I have before me, dated January 21, 1960, the form which the review board submits to the department to request that another fee appraiser be assigned for their consideration on a particular property, and I will read this:

The review board requests another appraisal by an appraiser who is qualified to make appraisals of industrial property on the following:

Mr. MAY. We notice that here is a memo from the review board and they are requesting that another appraisal be made by an appraiser

who is qualified to make appraisals of industrial property on the following.

Mr. CONSTANDY. To continue:

Parcels 103, 103-A, TS-106, and RT-101 (Louise L. Charpentier) and parcels 105, 105-A, 105-B and TS-119 (Damort Land Corp.). Both properties have already been appraised by Mr. Collins and Mr. Schwartz.

There appears in addition on this sheet the names John McGrath. John McGrath, to our knowledge, was a fee appraiser assigned on occasion by the department of public works to make appraisals on their behalf.

Someone has drawn a line through the name of John McGrath, and there also appears a stamp, it being the stamp of the right-of-way office and it reads—

Right-of-way office, Received January 22, 1960. Referred to Stephen.

Mr. Stephen is Mr. Elton Stephen, then and now an employee of the department of public works.

Mr. MAY. Mr. Chairman, up to this point it remains a mystery as to who actually made the assignment of Mr. Lawton to the Damort and Charpentier cases. There is a gap between the testimony of Mr. Lawton that Mr. Harney said that Mr. Lawton would be assigned to those two properties, and who actually made the assignment.

Mr. CRAMER. The letter of assignment is already in the record, is it not, Counsel?

Mr. MAY. Yes. The letter was actually signed by Associate Commissioner George Toumpouras, and we will have testimony from various people we hope today that might shed some light on that situation.

I would like to offer that document as exhibit 21, Mr. Chairman, and also the letter from Mr. Jacobs to Commissioner Dole as exhibit 22.

Mr. JOHNSON. Without objection, it will be entered in the record. (The documents referred to were marked for identification, received as "Exhibits 21 and 22" and are retained in subcommittee files.)

Mr. MAY. Now another subject in which we were most interested was the subject of fees paid to fee appraisers.

Mr. Constandy, what did Commissioner Dole have to say with respect to that subject?

Mr. CONSTANDY. Mr. Dole stated that the establishment of a fee to the appraisers on each parcel was sometimes done by himself. Again I direct your attention to the form E-28, to that column marked "Fee." In those cases where he would assign the fee he would enter in that column next to the property the fee that would be paid by the department to make an assignment on that particular parcel.

If on occasion Mr. Dole had some doubt as to what the amount should be, he would in turn confer with Mr. Dodge, and Mr. Dodge during this period has been variously assistant right-of-way engineer, acting right-of-way engineer, and is today right-of-way engineer. Mr. Dole stated generally that the fee was written on the E-28 by the right-of-way division. In other words, more times than not they set the fee rather than he, because they were more familiar with what would be involved from the standpoint of work, and would be better qualified to put down the figure to represent the compensation for having done that work.

Mr. MAY. Mr. Chairman, we will recall that when Mr. Harney called Mr. Lawton to ask him if he would do a couple of appraisals in the Attleboro area, Mr. Harney pointed out to Mr. Lawton that the fees would be \$500 for each property.

Mr. CONSTANDY, do we have some information with respect to the original fees to be paid to fee appraisers on the Damort and Charpentier property?

Mr. CONSTANDY. Yes. When those assignments were originally made, the E-28 bore a notation to the effect that Mr. Collins and Mr. Schwartz would be paid on the basis of \$200 for appraising Damort, and \$400 for appraising the Charpentier property.

Mr. MAY. And here we have a situation where Mr. Lawton was offered \$500 for each property, or a total of \$1,000 that he was actually paid, as against the \$600 that the other people were paid.

Did Commissioner Dole mention the occasions when the original fees were actually increased, and the fee appraiser received more than the original fee offered to him?

Mr. CONSTANDY. Yes. Commissioner Dole stated that on occasion a fee appraiser would complain that the fee was inadequate for the work that had to be done. In such a situation Commissioner Dole stated he would discuss the matter with Mr. Dodge, and if they felt that it was justified, an increase would be given to both fee appraisers who had appraised the property.

He clarified that by saying that on occasion assignments would be made to two people, one of whom would complain it was too much work for the amount of money that was to be paid, and that if in their judgment, after he consulted with Mr. Dodge, it was decided to raise the appraisal fee of one appraiser, they thereafter raised the appraisal fee of the other appraiser.

Also, he pointed out that on occasion the uncomplaining appraiser might already have submitted his invoice and have been paid, and in such a situation it would not be possible to get the additional money which was thereafter given to the man who did make the complaint; but it was his desire to be equitable in dealing with the two people, and where he raised the fee on complaint from one on advice of Mr. Dodge and it was justified, he raised both of them.

Mr. SCHERER. The Federal Government will not reimburse the State for the excessive costs caused by these frauds, will they?

Mr. MAY. I think that whole matter is now in the process of being discussed and settled between the Bureau of Public Roads and the Commonwealth.

Mr. SCHERER. And those cases where the State of Massachusetts has already made payments for excessive right-of-way costs and, of course, wherein the Federal Government will not reimburse them, has the State of Massachusetts come forward and taken any action to recover those moneys?

Mr. MAY. Not to my knowledge, Congressman.

Mr. JOHNSON. Mr. May.

Mr. MAY. I might point out now, since we are discussing fees, that it is my understanding that from July 1956 through 1960, the Commonwealth of Massachusetts paid some \$998,000 in appraisal fees to fee appraisers. I understand that from July 1956 through 1961 it

is in excess of \$1 million. We will have more exact information on it at a later date.

Mr. SCHERER. And the Federal Government in many cases has contributed to at least 90 percent of that cost.

Mr. MAY. The only way I have to judge it now, Congressman, is that we have received the figure \$65 million which has been spent by the Commonwealth during that period for highways including, or for just right-of-way acquisition, and the Federal Government share of that is some \$48 million. So in that proportion I would expect that the Federal Government also shared in the fees to the appraisers, which would be around some \$700,000.

Mr. CRAMER. Isn't it further true, counsel, when the Beasley report was made and the department was put on notice, that is, by the Bureau of Public Roads, that there were some questionable appraisals and questionable payments by the State and these moneys already were paid by the State, that the Bureau withheld 90 percent Federal contributions in substantial sums? I think it amounted to around \$8 to \$10 million, did it not?

Mr. MAY. Around that, Congressman.

Mr. CRAMER. And those cases are now being negotiated out. Is that right? With a determination as to in what instances fraud did occur and in what instances it did not?

Mr. MAY. Yes. There is a process now taking place and as a result of that—

Mr. SCHERER. That is an accounting between the State of Massachusetts and the Federal Government that is taking place.

Mr. MAY. Yes. At the present time there is another independent appraisal firm making certain appraisals in Massachusetts and, as a result of their work, arrangements will be made between the Bureau and the State with respect to money.

Mr. SCHERER. What has happened in those instances where the Federal Government has decided not to reimburse the State of Massachusetts? What has the State of Massachusetts done to recover its losses which resulted from fraudulent conduct, if any?

Mr. MAY. Congressman, I don't know that there has been any specific case on which the Bureau has already told the State that it will not participate. As they stand today, I do not know what the State has done about recovering any money.

Mr. CRAMER. Well, if the Federal Government does not pay it, then the State is stuck with this bill. Is that right?

Mr. MAY. Yes.

Mr. CRAMER. And the State taxpayers in the long run are the ones who suffered from this fraud in this particular instance, because they are discovered. And, as the gentleman from Ohio suggests, the State has the responsibility of trying to collect, the State authorities.

Mr. SCHERER. It is the State's problem but I do understand that there are some cases wherein the Federal Government has come to the conclusion that we will not reimburse them for certain costs on certain projects because of the fraud and deficiencies involved.

Mr. MAY. Mr. Constandy, in discussing fees and increases of original fees, one of the fee appraisers mentioned to Commissioner Dole, might I ask, was a William M. Jacobs?

Mr. CONSTANDY. Yes. That is correct.

Mr. MAY. And Commissioner Dole told us that there had been times when Mr. Jacobs' fees were indeed increased?

Mr. CONSTANDY. That is correct.

Mr. MAY. We must recall that Commissioner Dole does not have a generally intimate knowledge of a particular property and the amount of work required by a fee appraiser to make an appraisal of this property. Commissioner Dole pointed out when there was some doubt, or increases were asked for, he would discuss these matters with Mr. Dodge and his right-of-way people who would be more familiar with it. Did Commissioner Dole also mention that on occasions other people would speak on behalf of fee appraisers attempting to obtain an increase for the fee appraisers with respect to the original fee?

Mr. CONSTANDY. Yes. Commissioner Dole, although he was unable to specify a particular appraiser, did state that on occasion Mr. Sheridan, Mr. Kelly, and Commissioner Toumpouras suggested that certain fees be increased to that appraiser for the work he had done; and when they made those suggestions he would consult with Mr. Dodge and generally those fees were then increased.

Mr. MAY. Mr. Chairman, concerned with Mr. William M. Jacobs, we accumulated from the records certain data with respect to Mr. Jacobs. Mr. Kopecky, would you relate to the subcommittee some of that information?

Mr. KOPECKY. Yes, sir. Mr. Jacobs received his first assignment on October 14, 1955. He received his last assignment on June 29, 1960, and he received his last payment from the department of public works on April 13, 1961.

Mr. MAY. Mr. Kopecky, as we have seen from the records of the department, Mr. Jacobs, William M. Jacobs, over the past several years has received more fee appraisal work than any other fee appraiser. Is that right?

Mr. KOPECKY. That is true.

Mr. MAY. What has been the total payment to Mr. Jacobs for fee appraisal work by the Commonwealth?

Mr. KOPECKY. \$78,100.

Mr. MAY. \$78,100 to Mr. Jacobs by the Commonwealth for fee appraisal work?

Mr. KOPECKY. Yes, sir.

Mr. MAY. Could you give us a breakdown of that?

Mr. KOPECKY. Yes. In 1956 he was paid \$5,850. In 1957, \$2,550. In 1958, \$23,650. In 1959, \$27,600. In 1960, \$13,700. In 1961, \$4,750, or a total of \$78,100.

Mr. MAY. And as you stated, he received his first appraisal assignment October 14, 1955, and his last assignment June 29, 1960, and I noticed you mentioned he did receive payments in 1961?

Mr. KOPECKY. Yes, sir.

Mr. MAY. In other words, he was getting paid in 1961 for work he had done in 1960?

Mr. KOPECKY. Earlier. Yes, sir.

Mr. SCHERER. Could I ask Mr. Kopecky a question?

Mr. JOHNSON. Yes.

Mr. SCHERER. It is obvious for quite some time that the State of Massachusetts has been defrauded, irrespective of whether the Federal Government is going to reimburse them or not for some of these costs. Do you know of any incident where the State of Massachusetts has gone forward to recover some of the money that it has been defrauded of?

Mr. KOPECKY. I do not personally know of that fact.

Mr. SCHERER. Your investigation did not disclose it?

Mr. KOPECKY. No, sir.

Mr. SCHERER. Even in these cases where criminal convictions have been obtained?

Mr. KOPECKY. I don't personally know of any particular case where the State has gone forward and concurred with the Bureau of Public Roads to withhold any payment.

Mr. CRAMER. May I ask a question, Mr. Chairman? Will the gentleman yield?

Mr. JONES. Mr. Cramer.

Mr. CRAMER. Do you know of any efforts? If in fact Mr. Jacobs received \$78,100 and if in fact, as I assume the record will show before the hearings are over, if Mr. Jacobs turned in a number of fraudulent reports, then not only is the amount of money to be recovered that which the State has to pay because the Federal Government won't contribute, but likewise it would be a breach of contract on his part and the State would have a right to recover a good portion of the \$78,000 or at least that part relating to his fraudulent work. Has anything been done in that regard?

Mr. KOPECKY. To my understanding the Bureau of Public Roads and the Department of Public Works of the Commonwealth of Massachusetts are reviewing at least certain of these cases.

Mr. CRAMER. The Federal Government did participate in that \$78,000 to the extent of 90 percent, did they not?

Mr. KOPECKY. Yes.

Mr. MAY. It might not be 90 percent.

Mr. KOPECKY. It might be 90 percent in some cases and it might be 50 percent in some cases.

Mr. CRAMER. On the Interstate it is 90 percent and on the ABC system it is 50 percent.

Mr. KOPECKY. That is correct.

Mr. MAY. And it might be that not all of Mr. Jacobs' appraisals were made on properties involved—

Mr. CRAMER. I understand that and I don't mean to imply that, but certainly the record will show some of it.

Mr. MAY. A great part.

Mr. CRAMER. Yes.

Mr. SCHERER. But it would not be necessary then, would it, Mr. Kopecky, for the State and Federal Government to arrive at a determination as to whether the Federal Government is going to reimburse the State before the State went ahead and prosecuted in those cases in which there was obvious fraud. It is not necessary?

Mr. KOPECKY. That is true.

Mr. SCHERER. Isn't that right?

Mr. KOPECKY. Yes.

MR. SCHERER. You don't have to make a determination between the Federal Government and the State before the State could go forward, do you?

MR. KOPECKY. That's right.

MR. MAY. Mr. Kopecky, did you make some analysis of Mr. Jacobs' fees with respect to increases over original fees?

MR. KOPECKY. Yes. In certain of these appraisal assignments the fees were raised. In those cases where the fees were raised the original fees called for the payment to Mr. Jacobs of \$21,950. However, the appraisal fees were raised and he was instead paid a total of \$42,900, or an increase over the original amount of \$20,950.

MR. MAY. So I understand it clearly, on those—

MR. JONES. May I ask a question? What was the justification? Was there any evidence of justification for the increase by the Commission?

MR. KOPECKY. None that is known to me.

MR. BALDWIN. Could I ask a question, Mr. Chairman?

MR. JONES. Yes. Mr. Baldwin.

MR. BALDWIN. Mr. Kopecky, this might be extremely important if it applies in a much heavier ratio to him than other fee appraisers. May I ask a question as to whether this percentage of increase was typical with all fee appraisers checked, or was this particularly evident in the case of Mr. Jacobs?

MR. KOPECKY. I would say that this—not all appraisers had their fees raised. Some did, but not in each and every case.

MR. MAY. And in Mr. Jacobs case, his is apparently much more flagrant and common than with respect to other fee appraisers.

MR. BALDWIN. Thank you.

MR. CRAMER. He was much more successful in getting his requests approved. He must have been, if he got a 100-percent increase.

MR. KOPECKY. That's right.

MR. CRAMER. Instead of \$21,950 he got \$42,900, or about 100 percent increase.

MR. JONES. Was there any documentary evidence that the files disclosed as to why that increased that way?

MR. KOPECKY. No, sir.

MR. JONES. Did Mr. Dole make any explanation as to why certain people got increases and others didn't? How did he go about it?

MR. MAY. As we have already heard, Mr. Chairman, Commissioner Dole sitting in his office invariably does not know about a particular property. He is not intimately acquainted with it, nor with the work involved in doing the appraisal of that particular property. So Commissioner Dole said when it came about that the occasion arose where requests for increases were obtained, he would discuss those matters with Mr. Herbert Dodge and with the people in the right-of-way division who are out in the field.

MR. JONES. My question is, how did they lodge those requests? Was it in conversation, or in a letter, or how did they go about it? They didn't do it without some ulterior motive? They didn't just jump it up.

MR. MAY. Yes. Commissioner Dole commented on that and said invariably it was done by conversation or telephone call on the part of the fee appraiser himself, or somebody on his behalf.

Mr. CRAMER. Mr. Chairman.

Mr. JONES. Mr. Cramer.

Mr. CRAMER. This is extremely revealing because here is a fellow who unquestionably, it will be proven, turned in some fraudulent reports, and he was getting a big chunk of the appraisal business, and not only was he costing the State and Federal Government substantial funds in inflated appraisals, and what he was getting on the side I don't know, but in addition to that he is able to euchre 100 percent more out of the State itself for the work that was done, on his own appraisal fees.

Mr. SCHERER. That's why I asked before whether the State of Massachusetts had gone forward to recover any of this money, because I don't know what the statute of limitations is in Massachusetts. The Federal Government will not be out for any of this because they will refuse to reimburse the State. I am wondering if there is not a statute of limitations and what it is in Massachusetts. Of course, that is their problem.

Mr. CRAMER. Also it is interesting to note that during 1959 and 1960, and even into 1961, when these investigations were underway, when the Beasley reports had been made and the Bureau of Public Roads had come to a conclusion about it and when unquestionably they had discussed those matters with the State, he still got in 1959 \$27,600 worth of work, in 1960 \$13,700 and in 1961 \$14,750. Is there any explanation as to why this fellow was permitted to continue appraisals when they knew his past appraisals were under question?

Mr. MAY. Congressman——

Mr. CRAMER. Why did they keep him on the payroll under these circumstances?

Mr. MAY. There did come a time when he was removed from the payroll. I am not assured that the Commonwealth of Massachusetts, or anybody within the Commonwealth of Massachusetts, could ascertain from Mr. Beasley's report, for example, that Mr. Jacobs' appraisal was actually fraudulent.

I am not sure that there did come a time early that it was obvious that Mr. Jacobs had indeed committed fraudulent acts.

Mr. CRAMER. They were sure put on notice, it would seem to me, by the Bureau of Public Roads at some time at least from the standpoint of these investigations going on. The State knew Beasley was in there and knew that the Bureau of Public Roads were going to investigate it, and unquestionably they were investigating it and they knew Jacobs was one of the people they had reason to believe was involved. They kept him on the payroll and gave him new jobs and paid him during the last few years \$45,000 more. I can't understand that.

Mr. SCHERER. Maybe he knew too much.

Mr. JONES. Let me ask a question of the committee counsel. Did Mr. Dole tell you in your interview as to whether or not any of the former sponsors of the appraisers had interceded to see that they got additional compensation for their work?

Mr. MAY. Commissioner Dole was not able to remember specific cases and specific matters. He just talked in that area and in a general way, that certain people at times did request increases for appraisals.

Mr. CRAMER. On that point, Mr. Chairman.

Mr. JONES. Yes, Mr. Cramer.

Mr. CRAMER. Isn't it true further that during the same period Mr. Jacobs, and don't we have some proof that he was drawing rather substantial enhancement fees from property owners on the other side of the fence? Isn't there something in the record already on that question?

Mr. MAY. Not yet, Congressman. I would point out that Mr. Jacobs was released and was given no further work after June 1960. We will have additional testimony on these matters.

Mr. CRAMER. All right.

Mr. MAY. Yesterday Commissioner DiNatale testified concerning certain matters with respect to Mr. Jacobs. Did Commissioner Dole also have something to say on that matter, Mr. Constandy?

Mr. CONSTANDY. Yes. Commissioner Dole stated that at one time Commissioner DiNatale called him into his office and asked him if there was any reason why they had to retain Jacobs? Commissioner DiNatale added that it would be well if they didn't give Jacobs any more work. Commissioner Dole stated that Commissioner DiNatale did not give any reason for having taken that position.

Mr. MAY. What did Commissioner Dole do after that?

Mr. CONSTANDY. Commissioner Dole stated that he thereafter did not give Jacobs any additional work, and about a month later Mr. Edmund Sheridan told Commissioner Dole that, "The boss wants Jacobs put back on again." Commissioner Dole stated that thereafter he did give Jacobs additional work for a brief period but then on his own initiative terminated Jacobs and did not subsequently give him any more work.

Mr. CRAMER. When was this? When did he first suggest he not be given any more work? What year?

Mr. CONSTANDY. Congressman, we have spoken to Commissioner DiNatale and to Commissioner Dole about this and neither one of them are able to pinpoint the time. However, I believe from the best of their recollection and what we are able to reconstruct, it was sometime either in late 1959 or probably during early 1960.

Mr. MAY. We will recall when Commissioner DiNatale appeared here yesterday, he testified that he did not give instructions that Jacobs would be given additional work after first telling Commissioner Dole to release Mr. Jacobs. Did Commissioner Dole, Mr. Constandy, comment on the confidential nature of the fee appraisal reports, and other data?

Mr. CONSTANDY. Yes. Commissioner Dole stated that, as I believe we have mentioned before, the review board figure was confidential and it was not to be made public to anyone. It is on that figure that the State thereafter bases its negotiations.

Mr. MAY. Did he also mention the fee appraisal reports and figures?

Mr. CONSTANDY. Yes. Commissioner Dole stated that there were occasions when Commissioner Toumpouras, Mr. Kelly, or Mr. Sheridan would have occasion to ask for the review board figure and/or the figure of a particular appraisal report.

Mr. MAY. So I understand that Commissioner Dole pointed out that the fee appraisal figures, as well as the review board figures, were confidential and not to be made public, but there were occasions when Toumpouras and Kelly and Sheridan did ask for the review board figure and the fee appraisal figure.

Mr. JONES. Is that all?

Mr. MAY. I have no further questions of Mr. Constandy.

Mr. JONES. Are there any further questions at this time? The committee will stand in recess until 1:30. Commissioner Dole, you are discharged.

Mr. DOLE. Thank you very much, Mr. Chairman.

(Whereupon at 12:05 p.m. the hearing was recessed until 1:30 p.m. of the same day.)

AFTERNOON SESSION

Present: Representatives Jones (presiding), Baldwin, Cramer, Johnson, and Schwengel.

Mr. JONES. The committee will come to order. Mr. Herbert L. Dodge? Mr. Dodge, before you have a seat we will administer the oath.

Do you solemnly swear that the testimony that you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DODGE. I do.

TESTIMONY OF HERBERT L. DODGE, NEEDHAM, MASS.

Mr. JONES. Have a seat, Mr. Dodge.

Will you identify yourself, Mr. Dodge, as to your address and your occupation?

Mr. DODGE. My name is Herbert L. Dodge. I live at 26 Tolman Street, Needham, Mass., and I am a civil engineer, employed by the department of public works.

Mr. MAY. Needham, Mass., is spelled N-e-e-d-h-a-m. Is that right?

Mr. DODGE. Right.

Mr. MAY. Mr. Dodge, do you have a degree in civil engineering?

Mr. DODGE. Yes.

Mr. MAY. When did you obtain that?

Mr. DODGE. 1926.

Mr. MAY. And when did you become employed with the Massachusetts Department of Public Works?

Mr. DODGE. May 3, 1926.

Mr. MAY. Are you now a licensed real estate broker?

Mr. DODGE. I was. I haven't renewed my license yet. I intend to; yes.

Mr. MAY. You are a professional engineer and surveyor?

Mr. DODGE. Yes.

Mr. MAY. Would you briefly describe your experience within the department?

Mr. DODGE. Well, I have actually worked at some time in several divisions of the department.

When I first came there I worked for—these years may not all add up to my length of service, because I am just estimating it—I worked 2 or 3 years in what is known as the layout department, where they make the layout plans or the land-taking plans. After that, I worked another 2 or 3 years in the estimating department, where they estimate the quantities for preparing jobs for advertising. And at that time I was transferred into the right-of-way division.

I worked there until during the war when I took about a year and a half off for work in E. B. Badger's in Boston, where they design the steel stuff for the Government.

Mr. MAY. Mr. Dodge, when did you initially serve in the right-of-way division?

Mr. DODGE. I think it was 1933.

Mr. MAY. And you served in that capacity or in that division for 5 or 6 years. Is that right?

Mr. DODGE. Oh, yes. I forgot something there. I served—I served in the right-of-way division for a while, and then I was transferred to the field, where I was on construction as a resident engineer for about 2 years.

Mr. MAY. Well, in the thirties, when you were in the right-of-way division, you served as an appraiser and negotiator?

Mr. DODGE. Yes.

Mr. MAY. Is that true? When I say "negotiator" there, I mean a person who would deal directly with the property owner with respect to settlements. Is that right?

Mr. DODGE. That's right.

Mr. MAY. After you returned to the right-of-way division—

Mr. DODGE. Well, then, as I say, I went out on construction for a while. Then I came back to the right-of-way division.

And then I went out to the war industry and I came back again for a period of about 2 years or so and I worked in the division known as the locating—locations division.

Mr. MAY. All right.

Mr. DODGE. And then I returned to the right-of-way division where I have been ever since.

Mr. MAY. You returned to the right-of-way division about 1948?

Mr. DODGE. Yes; I imagine that's about right.

Mr. MAY. And at that time, as an assistant to the right-of-way engineer?

Mr. DODGE. No. No. At first, when I came back to the right-of-way division—as a matter of fact, Mr. Ellis and I both worked in the locations engineering department at the same time. We both returned to the right-of-way division at the same time.

Mr. Ellis passed me off as his right-of-way engineer, but I was just an appraiser and negotiator at that time.

Mr. MAY. Well, you eventually became assistant—

Mr. DODGE. I later on became assistant—

Mr. MAY. To the right-of-way engineer? When did that take place approximately?

Mr. DODGE. Oh, I would have to guess. It was probably in the early fifties, 1952 or 1953, somewhere in there.

Mr. MAY. As I understand it, Mr. Ellis retired about October or November of 1958. Did your capacity change at that time?

Mr. DODGE. Yes. Actually, I think it was December 1, 1958, at which time he retired and then I became the acting right-of-way engineer.

Mr. MAY. You eventually did become right-of-way engineer?

Mr. DODGE. Yes.

Mr. MAY. When did that happen?

Mr. DODGE. In the spring of 1960.

Mr. MAY. Are you now right-of-way engineer for the department?

Mr. DODGE. Yes.

Mr. MAY. As right-of-way engineer to whom are you directly responsible?

Mr. DODGE. Well, according to the organization chart of the department I am directly responsible to—I am directly responsible to an engineer in charge of rights-of-way and construction and preliminaries.

Mr. MAY. According to the organizational chart, you are responsible to an assistant engineer in the construction division. Is that right?

Mr. DODGE. That's right.

Mr. MAY. As a practical matter, as right-of-way engineer, to whom do you answer?

Mr. DODGE. As a practical matter, sir, I answer to many people; possibly as many as nine people.

Mr. MAY. Would you give us an example?

Mr. DODGE. Yes. When I first went there the man that was in this position was a Mr. Boucher.

He retired about 2 weeks ago.

Mr. MAY. That is Edmond E. Boucher?

Mr. DODGE. That is Edmond Boucher.

Mr. MAY. B-o-u-c-h-e-r?

Mr. DODGE. Yes. And then an assistant to the chief engineer, Mr. Cox; the chief engineer, Mr. McCarthy—and I am going up the offices as they occur in the building—and then Mr. DiNatale, Mr. Ricciardi, Mr. Sheridan—

Mr. MAY. Which Mr. Sheridan?

Mr. DODGE. Mr. Edmund Sheridan. Sometimes, Mr. Kelly.

Mr. MAY. Which Mr. Kelly?

Mr. DODGE. Mike Kelly.

Mr. MAY. Mike Kelly?

Mr. DODGE. Mr. Toumpouras and Mr. Dole.

Mr. MAY. Mr. George Toumpouras and Mr. Dole?

Mr. DODGE. Yes.

Mr. MAY. At various times these people would have certain suggestions for you?

Mr. DODGE. Yes. That's right.

Mr. MAY. Now, Mr. Dodge, as right-of-way engineer, you have been responsible for obtaining satisfactory staff appraisals for the takings made by the department. Is that right?

Mr. DODGE. Yes.

Mr. MAY. You would be responsible then for having those appraisals reviewed properly by personnel of the department?

Mr. DODGE. Yes.

Mr. MAY. What sort of a system did you set up to accomplish that?

Mr. DODGE. Well, the system that was in order when I took over was, one, that possibly as many as three or four people were approving appraisals made by our appraisers in the field.

Mr. MAY. Well, various means have been attempted. Is that right?

Mr. DODGE. That's true.

Mr. MAY. In other words, you have had reviewing appraisers in the central office for a period, and they would review the appraisal reports.

At times you have tried the district method, where reviewing appraisers would be assigned to certain districts and be responsible for reviewing appraisals within that particular district. Is that true?

Mr. DODGE. That's true.

Mr. MAY. Could you give us an estimate of the number of land takings which would be made by the department in a given year?

Mr. DODGE. Oh, around 4,000 last year.

Mr. MAY. About how many of the 4,000 takings would involve Federal aid? Would you estimate that?

Mr. DODGE. Oh, probably 90 percent of them, maybe more. I never did estimate that, sir, but a large proportion of them.

Mr. MAY. For the moment we can talk in estimates, but suppose or do you suppose that would represent 3,600 land takings involving Federal aid?

Mr. DODGE. Yes.

Mr. MAY. Now, frequently, of course, when the property is valued in excess of \$2,500 you get more than one appraisal—you get, one, the staff appraisals. Sometimes the review board asks for an additional appraisal.

When we talk about 3,600 land takings about how many appraisal reports would we be talking about?

Mr. DODGE. Well, of course, every parcel that is taken has to be appraised.

Mr. MAY. Yes. So we are certainly talking about one appraisal at least, to begin with, one appraisal on each property?

Mr. DODGE. But, of course, this is also true that sometimes you might have as many as four or five parcels taken from one owner.

Mr. MAY. Yes.

Mr. DODGE. So that from the point of view of counting the number of actual appraisals it would decrease considerably in number.

Mr. MAY. Certainly. So I just want to get some estimate from you as right-of-way engineer of about how many appraisal reports would be furnished to the department.

Now, I am including fee appraisal reports, now, in the course of a given year. We are talking in terms of 6,000 or 7,000 appraisal reports?

Mr. DODGE. Oh, that is probably a fair estimate, yes.

Mr. MAY. All right. Now, there has been an expansion of the highway program. As a matter of fact, Massachusetts led many States in this country in expanding its highway program, did it not, even before the 1956 act?

Mr. DODGE. Yes.

Mr. MAY. And when a highway program is expanded, that would necessitate an expansion of the right-of-way department and the right-of-way division's operations.

Is that right?

Mr. DODGE. That's right.

Mr. MAY. So, your work being most important and being magnified several times, the use of competent, reliable employees in sufficient numbers to do this work becomes most important. Would you comment on that? Did you have a sufficient number of employees? Did you have qualified employees, competent and reliable employees?

Mr. DODGE. Well, our engineering employees over the last 10 years increased practically not at all. The increase in employees that we had was in the so-called negotiator group.

They did increase, well, you know, to a considerable degree.

Mr. MAY. As I understand it, in late perhaps 1948, or so, did you become involved in the Southeast Expressway in Massachusetts? Is that about the time?

Mr. DODGE. Yes.

Mr. MAY. And there was an expansion of the department at that time. You expanded from, perhaps, 25 people in the right-of-way division up to, say, 150 people. Is that about right?

Mr. DODGE. Well, not all at once, no.

Mr. MAY. Well, gradually?

Mr. DODGE. Gradually, yes.

Mr. MAY. Fairly rapidly over the next couple or 3 years?

Mr. DODGE. Yes.

Mr. MAY. So, for the past several years, you have had about 150 people at any one time within the right-of-way division?

Mr. DODGE. That's right.

Mr. MAY. And you mentioned that most of the increase of personnel would come about through the hiring of what you call people in the negotiator class, but would you explain that for the committee? When we say "negotiator," that is a title, is it not?

Mr. DODGE. That is a title, yes.

Mr. MAY. That does not mean that that particular person deals directly with the property owner with respect to settlements?

Mr. DODGE. No.

Mr. MAY. Could you explain what a "negotiator" might do in the operation?

Mr. DODGE. Well, when any one individual came to the department as a negotiator he usually was given some kind of a small assignment to begin with.

First, of course, he was interviewed to see what his experience and background was. Then we gave him an assignment which would give us some indication of what his potentialities were, and after we had him working for a while, why, we would size the man up.

And if he looked as though he had a certain amount of potentiality we would try to establish him in a position that he could go on up and learn the details of, not only negotiating and appraising, but possibly even becoming one of our better appraisers as time went on.

Mr. MAY. How did you generally make out?

Mr. DODGE. Well, that is a hard question to answer because recently there was a civil service examination—

Mr. MAY. I prefer not to deal with "recently." We have been discussing the period here back through the years up to, say, late 1959 or mid-1960.

Mr. DODGE. Well—

Mr. MAY. Up to that time, what sort of qualified employees did you have?

Mr. DODGE. Well, some of the men worked out well and others, of course, didn't. Naturally, there were all sorts of educational backgrounds and experience when they came in.

Some were lawyers and some were even probably salesmen or most any type of person you would be apt to get.

And also you can't always go by what the man's background is. Sometimes a fellow might have a very good potentiality even though he didn't have an education.

He might really develop well, regardless of his background.

Mr. MAY. Yes, he might. When we spoke with you up in Boston, Mr. Dodge, about this matter, you said that about 25 percent of the negotiators were good men; about 10 or 15 percent of the negotiators were not suitable in any way.

"There was nothing we could do about them. We couldn't get rid of them, so we put them on the shelf. We tried to find work for them to do, menial tasks, but we couldn't always find enough for them to do." Does that sum it up reasonably well?

Mr. DODGE. That's right.

Mr. MAY. Now, as right-of-way engineer, did you hire the people for your right-of-way department?

Mr. DODGE. No.

Mr. MAY. Who hired those people?

Mr. DODGE. Well, they came to work from the personnel office.

Mr. MAY. Now, this has been the practice through the years?

Mr. DODGE. Yes.

Mr. MAY. Why couldn't you—if a man proved to be unsuitable, could you discharge him?

Mr. DODGE. No.

Mr. MAY. Why?

Mr. DODGE. Well, just couldn't. That's all I can tell you, sir.

Mr. MAY. Did you ever try?

Mr. DODGE. No.

Mr. MAY. How do you know you couldn't?

Mr. DODGE. Oh, I don't know. You just—you just know you can't, that's all. What I mean is, that is the way the situation is, that these men come to work and they have to work.

Mr. MAY. I don't—you apparently felt that you couldn't discharge them?

Mr. DODGE. That's right.

Mr. MAY. Could you give us a reasonable reason why you felt that you could not discharge them?

Mr. DODGE. No, I don't know. The only reasonable reason is that you just know that you can't, that's all.

Mr. BALDWIN. Could I ask a question, Mr. Chairman?

Mr. JONES. Yes, Mr. Baldwin.

Mr. BALDWIN. Did you ever try?

Mr. DODGE. No, I never actually tried. No.

Mr. BALDWIN. Well, then, how would you know that you could not?

Mr. DODGE. Well, because I did, from time to time, make it known that some of the men were not doing too well, but there was nothing done about it.

Mr. BALDWIN. And to whom did you make that known?

Mr. DODGE. Oh, various people. No specific one.

Mr. BALDWIN. Well, you—

Mr. DODGE. I might. I have made it known to practically all of the gentlemen that I referred to.

Mr. BALDWIN. Well, who would have the power to terminate the employment of the men under you?

Mr. DODGE. I don't know.

Mr. BALDWIN. Well, you must have known——

Mr. DODGE. No, I didn't.

Mr. BALDWIN. If you were in the department.

Mr. DODGE. No, I did not know. I do not know which, if any, of those men, or possibly all of them could have done something about it.

Mr. BALDWIN. Well, to whom would you have made your complaints about the men? You must have picked out somebody to talk to. You just said that you made it known to several people.

Mr. DODGE. I did.

Mr. BALDWIN. And who were those people?

Mr. DODGE. Any of those nine people that I mentioned.

Mr. BALDWIN. Well, what specific ones did you talk to about men that were not——

Mr. DODGE. All of them.

Mr. BALDWIN. All of them?

Mr. DODGE. Yes.

Mr. CRAMER. What names did you mention?

Mr. DODGE. As far as I know, the only person that I never told, because I very seldom saw him, was the commissioner, Mr. DiNatale.

Mr. CRAMER. You named the men you talked to. Whom did you talk to? I did not hear that.

Mr. DODGE. Mr. Boucher, Mr. Cox——

Mr. CRAMER. Well, give us their positions. Boucher, what is his position?

Mr. DODGE. He is in charge of construction. Mr. Cox is assistant chief engineer.

Mr. McCarthy, the chief engineer; Mr. Ricciardi, at that time was assistant to Mr. DiNatale; and Mr. Sheridan, Mr. Toumpouras, Mr. Dole.

Mr. CRAMER. Can you give us an example of a specific complaint that you made about a specific person and what was or what was not done about it, and whom you made the complaint to?

Mr. DODGE. No, it wasn't a specific complaint. It was a general complaint about the ability of these men that I had to work with.

Mr. CRAMER. Well, what about their ability? Were they incompetent? They could not do the job? What was your complaint?

Mr. DODGE. Well, a great many of them couldn't do the job, and I just couldn't get what you would normally expect out of a man holding a negotiator position out of some of the men.

Mr. CRAMER. Now, you are talking about negotiators——

Mr. DODGE. That's right.

Mr. CRAMER. Not being qualified to do their job. Right?

Mr. DODGE. Yes, some of them.

Mr. CRAMER. And those negotiators also did appraisals. Is that right?

Mr. DODGE. No.

Mr. CRAMER. Well, how about the appraisers?

Mr. DODGE. Well, most of the appraisers or most of the men that we eventually selected to do appraising, we had——

Mr. CRAMER. I am not talking about fee appraisers.

Mr. DODGE. No, I am talking about departmental appraisers. No, we only selected the men that we felt could do some appraising.

Mr. CRAMER. And you did not make any complaints about departmental appraisers to any of these people you mentioned?

Mr. DODGE. No.

Mr. CRAMER. You did not see anything wrong with your appraiser staff, is that right, the departmental appraisers?

Mr. DODGE. Well, of course——

Mr. CRAMER. The work they were doing, I mean.

Mr. DODGE. Not specifically, no. We were able to pick out of the group enough men who, we thought, could do the appraisals——

Mr. BALDWIN. Would the gentleman yield?

Mr. DODGE. Staff appraisers.

Mr. CRAMER. Yes.

Mr. BALDWIN. Mr. Dodge, this is just fantastic. Now, you are still in this position. Do I understand correctly that as of today you would not know how to terminate a man who was under you in the Massachusetts Department of Public Works?

Mr. DODGE. All I could do would be to ask someone or tell someone that——

Mr. BALDWIN. And who would you make that request today to?

Mr. DODGE. Well, as of the present time I would probably go to the commissioner, if I really wanted, or the chief engineer.

Mr. BALDWIN. And you think that you would then get the man terminated if he was inefficient?

Mr. DODGE. Yes, I probably would. I'm not positive about it, because I haven't tried it.

Mr. BALDWIN. Well, why has this situation changed in your mind from, say, 2 or 3 years ago? Why do you feel it would accomplish that result now when it would not have in 1959 or 1960?

Mr. DODGE. Well, because at the present time we are trying to reorganize and build up the right-of-way division on a more firm and better basis.

Mr. CRAMER. Well, you say you made complaints about negotiators that you knew were incompetent to the people that you mentioned. Why did you not do then what you say you know you have to do now to get rid of them and complain to the commissioner? You say you specifically avoided complaining to him before.

Mr. DODGE. Well, because, at the present time, as I just explained to this gentleman here, there is within the department an understanding of the problem, that the right-of-way division has got to be strengthened.

Mr. CRAMER. Well, you might have been able to contribute to that understanding a long time ago if you had gone to the commissioner about it, might you not?

Mr. DODGE. I don't know.

Mr. CRAMER. Can you give an example of the examples of negotiators that you complained about?

Mr. DODGE. No, no specific man.

Mr. CRAMER. You do not remember any that you thought were incompetent?

Mr. DODGE. No—well—no, I don't. I never reported anybody that I know of by name; no.

Mr. CRAMER. Well, now, these people that you were complaining about that were incompetent, and that you could not get fired, could

not get anything done about, were they temporaries or were they permanent employees?

Were they on this, like Hopkins was, a 6-month reappointment for 8 years?

Mr. DODGE. All of these men are 6-month temporary.

Mr. CRAMER. All of them?

Mr. DODGE. All of the negotiators.

Mr. CRAMER. All negotiators?

Mr. DODGE. Yes.

Mr. CRAMER. You have no permanent positions under you for negotiators or anywhere in the department for negotiators?

Mr. DODGE. Well, they only work in my department.

Mr. CRAMER. All right. And you have none that are on the permanent roles as permanent employees?

Mr. DODGE. No.

Mr. CRAMER. Is it not awfully hard to administer a department when every 6 months the employees come up for rehiring?

Mr. DODGE. No, that is automatic.

Mr. CRAMER. It happens automatically?

Mr. DODGE. Yes.

Mr. CRAMER. Has anything been done to give any of these 8-year-old or other long-term temporary employees permanent status?

Mr. DODGE. Well, some 5 or 6 months ago they had civil service examinations.

Mr. CRAMER. Nothing was done up to that time, however?

Mr. DODGE. That's right.

Mr. CRAMER. Did you make any recommendation of that nature or others to your superiors?

Mr. DODGE. No.

Mr. CRAMER. You just complained about the bad situation?

Mr. DODGE. That's right.

Mr. CRAMER. The incompetents that you had?

Mr. DODGE. That's right.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. BALDWIN. Well now, Mr. Dodge, you say that these men were all on 6 months' periods of employment.

Well, then, if I understand it correctly, if you wanted to terminate a fee appraiser all you would have to do is not reappoint him at the end of a 6-month period. Is that not true?

Mr. DODGE. You mean a staff man.

Mr. BALDWIN. Well, you mentioned all the fee appraisers were on 6 months' periods.

Mr. DODGE. No, no, no. These are staff negotiators.

Mr. BALDWIN. All right. Your negotiators were on a 6-month period of employment. Right?

Mr. DODGE. Yes.

Mr. BALDWIN. Well, then, is it not true that if they are only on a 6-month period of employment, if you wanted to terminate them, all you would have to do would be not to renew them?

Mr. DODGE. I don't do that. That is done, as I said, automatically by the personnel department.

Mr. CRAMER. All right. When this—may I—

Mr. BALDWIN. Go ahead.

Mr. CRAMER (continuing). Follow that up? At the end of the 6-month period; take, for example, one of these incompetent negotiators, and you know he is incompetent—could you not fire him then and there by not renewing his contract?

Mr. DODGE. No.

Mr. CRAMER. That is the end of his employment period.

Mr. DODGE. I do not have the right of hiring or firing. That wasn't my duty at all.

Mr. CRAMER. Did you recommend that any particular people be fired at the end of their 6-month temporary employment because they were incompetent?

Mr. DODGE. No.

Mr. CRAMER. You have authority to make such a recommendation, do you not?

Mr. DODGE. I don't—I suppose I have authority to do anything of that nature, but I never did it.

Mr. CRAMER. Well, how long have you held your position, heading the right-of-way division?

Mr. DODGE. Well, I was assistant engineer, right-of-way division, for about 10 years and I have been right-of-way engineer since December 1, 1958.

Mr. CRAMER. And did you have a pretty clear understanding as to what your duties were when you were assistant, and now that you are head of the department, do you know whether you have power, as head of the department, to fire somebody at least when the 6-month period is up?

Mr. DODGE. I know that I don't have the power to fire anybody.

Mr. CRAMER. You have the power to recommend it?

Mr. DODGE. I suppose I could have recommended it.

Mr. CRAMER. But you have never exercised it?

Mr. DODGE. No.

Mr. CRAMER. And despite the fact that you knew a lot of them were incompetent, as you testified to?

Mr. DODGE. That's right.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. How are you carrying out your responsibilities in this fashion? You are there to protect the interests of the people of Massachusetts. Now, do you think you are doing that, in that knowing they are incompetent and not trying to get something done about it?

Mr. DODGE. Well, I thought I was doing as much as I could do, sir.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Well, the fact of the matter is that the machinery was so set up that you could not do anything even if you wanted to.

Mr. DODGE. That's about it.

Mr. CRAMER. You knew it would not do any good and would not get any results?

Mr. DODGE. That's about it, sir.

Mr. CRAMER. Do the State fee appraisers have permanent positions?

Mr. DODGE. The fee appraisers?

Mr. CRAMER. Yes.

Mr. DODGE. No.

Mr. CRAMER. State appraisers?

Mr. DODGE. You mean the staff appraisers?

Mr. CRAMER. That is right, staff appraisers.

Mr. DODGE. No—well, some of them do, yes, because the staff appraisers come from both the engineering group and the negotiator group.

Mr. CRAMER. And how many of those do you have now?

Mr. DODGE. Oh, possibly about 20 of them.

Mr. CRAMER. You have 20 staff appraisers?

Mr. DODGE. I don't know, sir.

Mr. CRAMER. How many are permanent and how many are on this 6-month renewal basis?

Mr. DODGE. Well, you ask me to estimate something that I don't know.

Mr. CRAMER. Well, you are head of this department for 2 years—3 years, going on 4, and you have been assistant for 10 years, and you do not know how many permanent staff appraisers you have?

Mr. DODGE. We have about 30 men doing appraisal work.

Mr. CRAMER. Staff appraisal?

Mr. DODGE. Yes.

Mr. CRAMER. Full-time.

Mr. DODGE. Yes.

Mr. CRAMER. And how many are permanent?

Mr. DODGE. About half of them.

Mr. CRAMER. So, 15 of them approximately are on a 6-month renewal basis?

Mr. DODGE. That's right.

Mr. CRAMER. Does any of their work come to your attention as being inferior? You say a lot of negotiators, yes, but how about fee appraisers?

Mr. DODGE. No, because the fee appraisers, on the whole, are picked from the better men. They are picked from the better—not on the whole. They are entirely picked from the better men.

Mr. JONES. Any further questions?

Mr. CRAMER. That is all.

Mr. MAY. Mr. Dodge, we know from the testimony thus far the manner in which fee appraisals were selected and the part the right-of-way division itself played in that.

I just wanted to ask you one point: If the original departmental appraisal was later revised did Commissioner Dole, and then the review board, receive both appraisals from the department?

Mr. DODGE. Yes.

Mr. MAY. It was expected that they would be given all the appraisals ever made on a given piece of property?

Mr. DODGE. That's right.

Mr. MAY. With respect to E-28 forms, those forms which eventually brought about the assignment of the appraisers, were you in the habit of running off several copies of the form?

Mr. DODGE. Yes.

Mr. MAY. Now, for a period, with the exception of Mr. Dole's department, where it probably went to Mr. Dole, the remainder of the copies run off stayed within the right-of-way division, is that right, for a period?

Mr. DODGE. Well, I will have to correct that. At the time that only Mr. Dole got a copy there wasn't any extra ones around.

Mr. MAY. I see. All right. There came a time when somebody asked you to bring him the E-28 forms after Commissioner Dole had made his assignment of fee appraisers?

Mr. DODGE. Yes.

Mr. MAY. Who asked you to do that?

Mr. DODGE. I don't know. It was somebody. It was a message of some type from the commissioner's office. It was not in writing.

Mr. MAY. Did there not come a time when an individual asked you to let him see the assignments that Commissioner Dole had made?

Mr. DODGE. No. It was in the form of a message that I got from the commissioner's office, that in the future, when I took an assignment sheet to Commissioner Dole—

Mr. JONES. What was the form?

Mr. DODGE. That is the E-28 form.

Mr. JONES. What?

Mr. DODGE. E-28 form. A copy of it.

Mr. JONES. Who told you about it? Did it come as a written memorandum or through conversation?

Mr. DODGE. No, not a written memorandum.

Mr. JONES. How was it made to you? How was the information conveyed to you?

Mr. DODGE. Well, I don't know, sir. It's quite a few years ago that it happened.

Mr. JONES. Well, your best recollection.

Mr. DODGE. What's that?

Mr. JONES. Your best recollection.

Mr. DODGE. Well, the only recollection that I could give, because it isn't in writing, is it was delivered over the telephone from the commissioner's office.

Mr. JONES. So you got it by telephone?

Mr. DODGE. Yes.

Mr. JONES. Do you know who, in the —

Mr. DODGE. No.

Mr. JONES. Commissioner's office gave you that communication by telephone?

Mr. DODGE. No. In fact, I—

Mr. JONES. Did you talk—

Mr. DODGE. No.

Mr. JONES. Did you ask whoever gave you that information "how did it come about"?

Mr. DODGE. Well, it is only my best recollection that it came about through a message from the commissioner's office to the secretary.

Mr. MAY. Now, the commissioner's office necessarily included a number of people?

Mr. DODGE. That's right.

Mr. MAY. Prior to that time, Mr. Dodge, prior to the time when you began the practice of submitting an extra copy of the E-28 to the commissioner's office, did anybody—

Mr. DODGE. Prior to what, you said?

Mr. MAY. Yes. Prior to that time did anybody previously ask you if they could see Commissioner Dole's assignments and thereafter make changes on them?

Mr. DODGE. No.

Mr. MAY. No?

Mr. DODGE. No.

Mr. MAY. Were you aware that anybody did make changes of Mr. Dole's assignments?

Mr. DODGE. No, I am not aware of it, no.

Mr. MAY. Well, Commissioner Dole told us that he became aware that somebody was making changes and he discussed the matter with you.

Mr. DODGE. Prior to my submitting a——

Mr. MAY. I beg your pardon?

Mr. DODGE. Prior to my submitting the other copy?

Mr. MAY. Yes. Yes.

Mr. DODGE. Well, I don't recollect it. I don't—I don't remember.

Mr. MAY. You did remember earlier, Mr. Dodge. All right.

Mr. DODGE. I did remember earlier?

Mr. MAY. After you began to submit the copies to the commissioner's office——

Mr. DODGE. Yes.

Mr. MAY. Did you become aware that changes were being made in Mr. Dole's assignments?

Mr. DODGE. In what manner, sir?

Mr. MAY. In any manner, sir.

Mr. DODGE. After submitting duplicates of the appraisal request to the commissioner's office, when I got an assignment sheet from Commissioner Dole—I didn't get it, by the way.

It was more frequently delivered by Mr. Dole's secretary to the girl in my office, who wrote up the assignments, the assignment letters for Mr. Dole to sign.

There was changes made after that but they were made through Mr. Dole's office.

Mr. MAY. Mr. Dodge, are you aware that changes were made in Mr. Dole's assignments not by Mr. Dole but by——

Mr. DODGE. No, they were not.

Mr. MAY. Others?

Mr. DODGE. They were not made by others.

Mr. MAY. Did anybody ever discuss the assignment of fee appraisers with you except Mr. Dole?

Mr. DODGE. No.

Mr. MAY. Did anybody other than Mr. Dole ever talk to you about the assignment of fee appraisers?

Mr. JONES. Well, Mr. Dodge, when did you first find out that there had been changes made in the assignments by Commissioner Dole?

Mr. DODGE. Well, I haven't had a chance yet to tell you how they were made.

Mr. JONES. Well, suppose you tell us that.

Mr. DODGE. When I get—when I got the assignment sheet from Commissioner Dole upstairs, as I said, many times it would be delivered to the girl who made out those letters that Mr. Dole signed.

Now, after that, sometimes the sheets would be called back——

Mr. JONES. Called back by whom?

Mr. DODGE. I don't—by someone in the commissioner's office, and then later on I would get another sheet from Commissioner Dole.

Mr. JONES. Are you speaking of Commissioner Dole? Did he recall them?

Mr. DODGE. Sometimes he recalled them himself.

Mr. JONES. Yes, and who else recalled them?

Mr. DODGE. Somebody from the commissioner's office.

Mr. JONES. Well, the commissioner would identify himself if he was trying to request a paper in your office. He would identify himself, would he not?

Mr. DODGE. Well, I don't mean—when I say the "commissioner's office" I don't mean Commissioner DiNatale.

I mean either Mr. Sheridan or Mr. Kelly might call for the sheet back, but it didn't happen very often.

Mr. JONES. Go ahead—

Mr. CRAMER. I have a question—

Mr. JONES. Just let me finish, Mr. Cramer, and then we will come right back. Then how frequently did that occur?

Mr. DODGE. Not too often.

Mr. JONES. Was it a common practice?

Mr. DODGE. No, it wasn't a common practice.

Mr. JONES. Well, when did it first commence that they would ask you to return to the commissioner this form for the purpose of changing appraisers?

Mr. DODGE. Well, they didn't ask me to return the form exactly to change the appraisers. They just asked me to return the form.

Mr. JONES. But that is what took place. The form went back to the commissioner at the commissioner's request, as you have testified. That is correct, is it not?

Mr. DODGE. That's correct.

Mr. JONES. And then when it came back to you or at some subsequent date you saw a change made in the fee appraiser, did you not?

Mr. DODGE. Sometimes they were; yes.

Mr. JONES. Yes. And now, when did that practice commence?

Mr. DODGE. I couldn't remember by date.

Mr. JONES. Well, did it happen—you have been in the department since 1933. Did it commence in—

Mr. DODGE. Oh, it commenced after this period where I took down two sheets, one to the commissioner—

Mr. JONES. And that was in 1958 or 1959?

Mr. DODGE. Yes, somewhere in there.

Mr. JONES. No one in the department ever had the experience prior to that time, had they, of sending back to the commissioners staff appraisals or fee appraisals for selection or employment, had they?

Mr. DODGE. No.

Mr. JONES. And so, it was the beginning of a new type of policy, you might say, that—

Mr. DODGE. That's right.

Mr. JONES (continuing). You did not see prior to that time?

Mr. DODGE. That is right.

Mr. JONES. And you have identified the two commissioners. And when they came back did you take any exception to the appointment of any of those people?

Mr. DODGE. No.

Mr. JONES. Was it your duty or responsibility—

Mr. DODGE. It was not my duty.

Mr. JONES (continuing). To make——

Mr. DODGE. It wasn't my duty.

Mr. JONES. It was not?

Mr. DODGE. No.

Mr. JONES. And, therefore, you merely carried out the policies of the commissioner with respect to the appointment of fee appraisers?

Mr. DODGE. That's right.

Mr. JONES. Mr. Cramer.

Mr. CRAMER. Yes, I have just one question.

A copy of this form, designating appraisers by projects, also went to the commissioner's office, did it not?

Mr. DODGE. Yes

Mr. CRAMER. Associate commissioner and to the commissioner's office. Right?

Mr. DODGE. Yes.

Mr. CRAMER. Now, did any of these forms, which went to the commissioner's office, come back with suggested appraisers?

Mr. DODGE. I think there are some of them that came back, yes.

Mr. CRAMER. Some forms came back containing names of suggested appraisers. Right?

Mr. DODGE. I believe so.

Mr. CRAMER. Yes. So that the suggested changes came from both the associate commissioner and from the commissioner's office, returning these forms which you had previously——

Mr. DODGE. Well, they came back, sir, but I believe they came back through Commissioner Dole's office.

Mr. CRAMER. And the forms that came back, however, were also forms that were sent to the commissioner's office?

Mr. DODGE. That's right.

Mr. CRAMER. That is right.

Mr. MAY. Mr. Chairman, Mr. Constandy has been sworn. Mr. Constandy, what did Mr. Dodge tell us with respect to this matter when we talked to him in Boston?

Mr. CONSTANDY. Mr. Dodge stated at that time that there came a time, perhaps, in 1958 when Edmund Sheridan began to ask Mr. Dodge to bring him the E-28's after Mr. Dole had made his assignment in fee appraisers; that occasionally Mr. Sheridan would say he would rather have other people assigned to do the appraisals than the ones who had been assigned; that changes were occasionally made; that once or twice Mr. Mike Kelly changed a name on the E-28 when Mr. Dole had been told.

Mr. Dodge said that he asked Mr. Kelly to check with Mr. Dole and he assumed that Mr. Kelly did.

Mr. Dodge said that he told Mr. Dole about the situation and that Mr. Dole told him he didn't care for the practice.

Later in 1959, Mr. Dodge stated he got word from the commissioner's office that a copy of the E-28, as it was submitted initially to Mr. Dole, was to be left in the commissioner's office.

Mr. Dodge stated that at that time one copy of the E-28, typed "F. B. Dole" went to Mr. Dole, and another copy typed "commissioner's office" went to the commissioner's office; that when he went to Mr. Dole's office he would leave one copy there and that he left the other copy on the desk shared by Mr. Sheridan and Mr. Kelly.

Mr. MAY. Mr. Dodge, is that a clear description of what actually did take place?

Mr. DODGE. Well, I thought it was about what I just told you. Where is it any different?

Mr. MAY. You would agree that that—you would agree that that is an accurate description of what actually did take place?

Mr. DODGE. That's right.

Mr. MAY. Now, Mr. Dodge, you, yourself, other than the mechanics that we understand within the right-of-way division, had nothing to do with the assignment of fee appraisers. Is that right?

Mr. DODGE. Yes, that's right, except on very rare occasions.

Mr. MAY. I was going to ask: Did you, yourself, personally, ever make an assignment to a fee appraiser?

Mr. DODGE. No.

Mr. MAY. Do you know a Mr. Charles H. Lawton, Jr.?

Mr. DODGE. I don't know him—I know who you are talking about, but I don't know the man personally, no.

Mr. MAY. Did you know the name of Mr. Charles H. Lawton as of January 29, 1960?

Mr. DODGE. Well, is that the date the assignment was made?

Mr. MAY. That is the date that Mr. Lawton was assigned to make an appraisal of the Damort property.

Mr. DODGE. Well, I knew him as of that date because the thing went through the office; yes.

Mr. MAY. How—

Mr. DODGE. You mean, did I know him personally? No.

Mr. MAY. Yes. How did you first hear the name "Mr. Charles H. Lawton, Jr."?

Mr. DODGE. I don't know.

Mr. MAY. Did Mr. Harney ever discuss Mr. Lawton with you?

Mr. DODGE. No.

Mr. MAY. How would you have known the name "Lawton"?

Mr. DODGE. Well, I got it from downstairs, the same as I got all assignments.

Mr. MAY. From whom downstairs?

Mr. DODGE. I do not know.

Mr. MAY. It was not Mr. Dole?

Mr. DODGE. No; it wasn't Mr. Dole.

Mr. MAY. Was it Mr. Sheridan?

Mr. DODGE. I don't know.

Mr. CRAMER. Well, he is not downstairs, is he?

Mr. DODGE. Yes.

Mr. MAY. Whoever mentioned it to you, what did he have to say about Mr. Lawton?

Mr. DODGE. As a matter of fact, sir, I don't know that he even said it to me. He may have said it to someone else, but he probably did say it to me, but I would assume it was—I have got to assume that it was via a telephone conversation that told me to assign that appraisal to Mr. Lawton.

Mr. MAY. Somebody from downstairs. When we say "downstairs," are we talking about where?

Mr. DODGE. The fourth floor. You know.

Mr. MAY. The fourth floor?

Mr. DODGE. Yes.

Mr. MAY. Somebody from the fourth floor called you and told you to have the appraisal of the Damort property assigned to Mr. Lawton?

Mr. DODGE. That's right. That's right.

Mr. MAY. What did you do?

Mr. DODGE. Well, evidently, from the record, I took it out to the girl and had it assigned, had the letter typed.

Mr. CRAMER. Well, I have not been there, Counsel. Can you tell me who is downstairs? Who is on this fourth floor.

Mr. DODGE. Those same nine men that I mentioned before.

Mr. CRAMER. All of those nine men are downstairs?

Mr. DODGE. Yes.

Mr. MAY. So, Mr. Dodge, you were the one that had Mr. Lawton's name included in the letter which was eventually signed by Mr. George Toumpouras which actually caused the appraisal to be assigned to Mr. Lawton. Is that right?

Mr. DODGE. I presume so, yes.

Mr. MAY. Now, all we need know is who called you from downstairs.

Mr. DODGE. And I don't know. I think I told you that in Boston quite a few times.

Mr. CRAMER. Mr. Chairman?

Mr. JOHNSON. Mr. Cramer.

Mr. CRAMER. Do you mean to say that on an important matter like assigning appraisers, where a change was requested contrary to what the associate commissioner, the name he had assigned—

Mr. DODGE. No, it wasn't contrary, sir.

Mr. CRAMER. Well, it was a different name—that you did not give your secretary any instructions as to what her authority was in making those changes without consulting you? Did you tell her to go ahead and make it without—

Mr. DODGE. It wasn't a change. It was a new assignment.

Mr. CRAMER. All right. It was a new assignment. It was a different assignment from that which had been previously made, a different assignment, taking one appraiser off and putting another one on?

Mr. DODGE. No, it wasn't, sir. This was an additional appraisal to the ones that had already been made.

Mr. CRAMER. Now, are you talking about Lawton?

Mr. DODGE. Yes.

Mr. CRAMER. How about these other people, Mr. Schwartz, and—

Mr. DODGE. Oh, I never did that.

Mr. CRAMER. What?

Mr. DODGE. You're talking about Lawton?

Mr. CRAMER. I am talking about Schwartz and some of these others, where changes were made downstairs on someone's recommendations.

Mr. DODGE. Now, what is your question?

Mr. CRAMER. Do you mean to tell this committee that you gave your secretary the authority to make—

Mr. DODGE. No, no.

Mr. CRAMER. To approve those changes?

Mr. DODGE. No.

Mr. CRAMER. To certify them?

Mr. DODGE. No.

Mr. CRAMER. Well, then who did have that? You saw them, did you not?

Mr. DODGE. We got all the changes, sir, that you are referring to and I believe they are all—there are assignment sheets on all of these.

Mr. CRAMER. All right. So an assignment sheet went, with a certain name, from your office to the commissioner—to the associate commissioner. If it came back with a different name on it how was it handled?

Mr. DODGE. Well, I don't believe you understand just how it went.

It went—if he asked—if they asked for an assignment sheet back downstairs it went down and then it came back upstairs with a different assignment on it.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. BALDWIN. If I understood correctly, Mr. Dodge, a little bit earlier you stated that you, yourself, did not make these assignments—

Mr. DODGE. I don't.

Mr. BALDWIN (continuing). That they come on these sheets through your office. They had already been put on the sheet before they reached your office?

Mr. DODGE. That's right.

Mr. BALDWIN. But in the case of the Damort property and the assignment of the final appraiser you, in your office, were the first one to add the name to a sheet. Is that right?

Mr. DODGE. It wasn't added ever to a sheet.

Mr. BALDWIN. Yes, but, if I understood your testimony a moment earlier, it was in your office that the name of the final appraiser in the *Damort* case was put on some kind of a document. Is that not right?

Mr. DODGE. It's just a scrap of paper. No. No, that's all it is.

Mr. BALDWIN. But you put it on that scrap of paper?

Mr. DODGE. It's my handwriting, yes.

Mr. BALDWIN. And then where did it go?

Mr. DODGE. It went to the secretary to type a letter for the commissioner's signature.

Mr. BALDWIN. So, for the first time, a name originated in your office as far as being put on a piece of paper?

Mr. DODGE. Yes.

Mr. CRAMER. Well, now, you say that a phone call came suggesting Lawton, to assign Lawton, from downstairs. Now, who made the phone call?

Mr. DODGE. I don't know. I don't remember.

Mr. CRAMER. You remember the phone call. You remember the incident?

Mr. DODGE. No, I don't remember the incident.

Mr. CRAMER. Well, you just testified to the incident. You said somebody—

Mr. DODGE. I said I would assume that that's the way it was done.

Mr. CRAMER. Well, who would you assume called then?

Mr. DODGE. Well, it could have been any one of three individuals.

Mr. CRAMER. Who?

Mr. DODGE. Mr. Sheridan, Mr. Kelly, or possibly, Mr. Toumpouras, but I don't believe it was because Mr. Toumpouras never called me.

Mr. CRAMER. All right. You have eliminated Mr. Toumpouras. Now, which one was it, Sheridan?

Mr. DODGE. I don't know. I really don't remember.

Mr. CRAMER. Or Kelly?

Mr. DODGE. I don't remember.

Mr. CRAMER. It was either Sheridan or Kelly?

Mr. DODGE. That is only an assumption. I don't remember.

Mr. CRAMER. That is all.

Mr. MAY. You recognized the voice at that time——

Mr. DODGE. Oh, no.

Mr. MAY. Did you not?

Mr. DODGE. I mean, I don't remember what it was, sir. How long ago was this?

Mr. MAY. January 29, 1960——

Mr. DODGE. Yes.

Mr. MAY (continuing). Is when the letter went out.

Mr. DODGE. I don't remember.

Mr. MAY. It must have been on the 21st or some time in between there. The point is that whoever told you to put Lawton on there carried enough responsibility, as far as you were concerned, that you went ahead and did it?

Mr. DODGE. That's right.

Mr. CRAMER. And you would do that if either Mr. Sheridan or Mr. Kelly told you to. Is that it?

Mr. DODGE. Or Mr. Toumpouras or Mr. Dole, but I don't believe either one of those did it, because Mr. Dole was out.

Mr. CRAMER. Mr. Dole was out at that time?

(Mr. Dodge nodding affirmatively.)

Mr. CRAMER. You remember that, do you not?

Mr. DODGE. Well, I remember it from the fact that you can look up the records and find it out.

Mr. CRAMER. You remember it was not Mr. Toumpouras but you do not remember who it was?

Mr. DODGE. That's right.

Mr. CRAMER. That is very interesting. You know who it was not, but you do not know who it was.

Mr. DODGE. Well, that's a fact.

Mr. MAY. Mr. Dodge, were there occasions when Mr. Sheridan would ask you if you could—if the department could offer more money on a certain piece of property?

Mr. DODGE. I believe there was a few times, yes.

Mr. MAY. Were there occasions, upon the request of Mr. Sheridan, that you felt obliged to go to Mr. Dole's office and gather up the file, the appraisal reports, and bring them to Mr. Sheridan with respect to particular properties?

Mr. DODGE. On a very few occasions, yes.

Mr. MAY. Did Mr. Sheridan, in his capacity, have a right to see those files?

Mr. DODGE. Well, I believe so, yes.

Mr. MAY. You considered that he was assistant to the commissioner, so he did have a right?

Mr. DODGE. That's right.

Mr. MAY. And after looking at those files were there occasions when he felt that the figures were too low?

Mr. DODGE. Well, he never expressed an opinion of that type, no.

Mr. MAY. He did not express an opinion ever that he thought the figure was too low on a given property?

Mr. DODGE. There was only one particular incident that I remember that such an expression was made.

Mr. MAY. Was there any other occasion after—what was that occasion?

Mr. DODGE. It is the one we spoke of and I believe it's the diner case. Agawam Diner, is that it?

Mr. CRAMER. Well, he did discuss appraisals with you. What did he say?

Mr. DODGE. That's about the only time that there was any discussion of an appraisal that I can recall.

Mr. CRAMER. Well, you said when he got these appraisals he discussed the matters with you. What else did he talk to you about?

Mr. DODGE. Nothing. Just that.

Mr. MAY. How did Mr. Dole—did you discuss that situation or those situations with Mr. Dole, where somebody was asking to see Mr. Dole's confidential files?

Mr. DODGE. I told him that, yes.

Mr. MAY. You told Mr. Dole that?

Mr. DODGE. He knew that, yes.

Mr. MAY. How did he react to that?

Mr. DODGE. Well, he didn't—he didn't approve of it.

Mr. MAY. He didn't approve of that sort of activity?

Mr. DODGE. That's right.

Mr. MAY. How did you feel about it.

Mr. DODGE. I felt that I was obliged to do it.

Mr. MAY. Did you care for that sort of an operation?

Mr. DODGE. Well, not since Mr. Dole didn't want to have it done, no.

Mr. MAY. You felt that you were sort of being put in the middle?

Mr. DODGE. I think so, yes.

Mr. MAY. Mr. Dole didn't want you to do that but Mr. Sheridan did?

Mr. DODGE. Yes.

Mr. MAY. Who prevailed?

Mr. DODGE. Well, if Mr. Dole had been there he probably would have prevailed, but he wasn't there.

Mr. MAY. Who did prevail?

Mr. DODGE. Mr. Sheridan did at that time.

Mr. MAY. Now, did Mr. Mike Kelly ever ask—

Mr. CRAMER. Well, just a minute, Mr. Counsel.

You mean that, in your opinion, an assistant—Mr. Sheridan, in the position of assistant to the commissioner, in your opinion, had more authority and should be listened to over an associate commissioner, himself. Is that right? Is that your conclusion?

Mr. Sheridan had more influence with you than Mr. Dole did?

Mr. DODGE. No, no; but how—

Mr. CRAMER. Unless Dole was there?

Mr. DODGE. Dole wasn't there.

Mr. CRAMER. But in the absence of Dole Mr. Sheridan was the one you followed. Is that right?

Mr. DODGE. That's right.

Mr. MAY. Did you ask Mr. Dole to do something about that, so you wouldn't be kept in the middle?

Mr. DODGE. I did, many times.

Mr. MAY. And what happened?

Mr. DODGE. Nothing.

Mr. MAY. Was not Mr. Dole actually critical of you for furnishing this information—

Mr. DODGE. He was critical, but when I asked him to do something to help me out, to clear the situation—not help me out, but to clear the situation so I would know, he didn't do anything about it.

Mr. MAY. The activity continued?

Mr. DODGE. Well—no; I don't want to leave the impression that it was a continuing, all-the-time activity.

Mr. MAY. No; was—

Mr. DODGE. It happened very seldom.

Mr. MAY. We want to make the record clear, too. This is not commonplace?

Mr. DODGE. No.

Mr. MAY. This did not happen every day?

Mr. DODGE. No; it did not.

Mr. MAY. This happened on rare occasions?

Mr. DODGE. That's right.

Mr. MAY. Did Mr. Kelly ever come to you and seek out similar information, Mr. Mike Kelly?

Mr. DODGE. Well, at this moment I don't recall that he did.

Mr. MAY. I think you told us, Mr. Dodge, that he did. As a matter of fact, you were not liberal with Kelly; you did not give him the information. You didn't think he was entitled to the information. Do you recall that?

Mr. DODGE. No; I really don't.

Mr. MAY. Did Mr. Toumpouras ever approach you and seek out similar information, information relative to a particular land taking, relative to the appraisal reports that had been gathered on the property?

Mr. DODGE. I remember just one occasion when Mr. Toumpouras asked me about the situation.

Mr. MAY. Did you—

Mr. DODGE. I can't remember the name of the owner either.

Mr. MAY. Did you gather the information for Mr. Toumpouras?

Mr. DODGE. I think I just got the information and not the appraisal reports.

Mr. MAY. What happened after that? Anything?

Mr. DODGE. I think Mr. Toumpouras merely said that there should be another appraisal, another opinion obtained, and I have forgotten whether there was or not.

Mr. MAY. Were there occasions when Mr. Sheridan might express his opinion that the figures were too low and thereafter you caused another appraisal to be made by the department?

Did that ever take place?

Mr. DODGE. I don't recall at the moment. No, sir.

Mr. MAY. Mr. Dodge, we had testimony that the review board figure, when it was handed down, was confidential.

Mr. DODGE. What's that—yes.

Mr. MAY. That is true? It was supposed to be confidential? Now, the people who negotiate the settlements were under your jurisdiction, where they not?

Mr. DODGE. Yes.

Mr. MAY. Did you learn from your negotiators that frequently the property owner's attorney would be aware of the review board figure?

Mr. DODGE. Yes.

Mr. MAY. And sometimes the property owner himself?

Mr. DODGE. Yes.

Mr. MAY. So you feel that your negotiators were somewhat handicapped in negotiating with the property owner when the property owner already had the maximum figure?

Mr. DODGE. Yes.

Mr. CRAMER. Did you ever try to find out where the leak was?

Mr. DODGE. Did I ever try to find out?

Mr. CRAMER. Your department was leaking like a sieve, it looks like. Who was leaking the information? Did you ever try to find out?

Mr. DODGE. No; I don't know I could find out. How could I find out?

Mr. CRAMER. It was your department. Did you try to find out?

Mr. DODGE. Well, I believe that that particular thing has existed in the department long before I was the right-of-way engineer.

Mr. CRAMER. Then these leaks—

Mr. DODGE. They had the same problems. They have always had the same problems, sir.

Mr. CRAMER. These leaks have been existing for a long time?

Mr. DODGE. That's right.

Mr. CRAMER. Nobody has ever tried to plug them up, yourself included?

Mr. DODGE. Well, as far as I know, and it got this way—they consider it a system that the fewest number of leaks possible would occur, but even so they do occur.

Mr. CRAMER. Well, you admit that the present system can be improved?

Mr. DODGE. Well, I don't know—no; I wouldn't go so far as to say that.

When you tell a man a figure it certainly has to go through one or two hands, and how are you going to pin down just exactly how that figure is leaking, if it is leaking?

Mr. CRAMER. Did you ever ask anyone of these persons that you mentioned, that have access to the figures, whether they had made it known, or those figures known, to anyone else?

Did you ever try to find out whether—

Mr. DODGE. Well, yes. Me and my assistants and Mr. Ellis, all of us at times have talked about it and wondered how it could happen.

Mr. CRAMER. Between each other; but did you ever talk to anybody who could have leaked the information? Did you ever ask that it be investigated?

Mr. DODGE. Well, those are people that could have leaked it.

Mr. CRAMER Well, the information was given to Mr. Sheridan. Did you ever discuss it with him?

Mr. DODGE. Well, the information was given to Mr. Sheridan very, very seldom, sir.

Mr. CRAMER. Well, it was given. It was given to him, however; you testified to that effect. Did you ever ask him whether he had told anyone else about it or did you ever instruct your people that this is confidential information?

Mr. DODGE. Well, it isn't completely confidential information because he is going to go out and make the offer to the property owner.

Mr. CRAMER. But he is not supposed to tell the property owner what the appraisal is, though, is he?

Mr. DODGE. Oh, you are talking about the appraisals?

I believe that the question has been in regard to the review board figure.

Mr. CRAMER. Well now, the negotiator is not supposed to tell the property owner what the review board's finding of maximum value is, is he?

Mr. DODGE. Oh, yes.

Mr. MAY. Is he?

Mr. DODGE. He is supposed to go out and make an offer, and there comes a time and usually very soon thereafter—in fact, many times his first offer is the top review board figure and later on, perhaps, even on the second visit—

Mr. CRAMER. How is the negotiator going to negotiate if he goes to the property owner and says, "Look, the review board has fixed x dollars as the maximum. Now, I will give you less." How can you negotiate?

Mr. DODGE. Well, sir, I will tell you right at the present time the Bureau of Public Roads is encouraging us to make a one-offer system and only—

Mr. CRAMER. But that does not mean the offer is the maximum, does it?

Mr. DODGE. Yes.

Mr. CRAMER. You mean you go out and negotiate with these people by saying "Here is the maximum that the board has fixed, and we offer it to you"?

Mr. DODGE. Yes; that is done.

Mr. CRAMER. Well, they are hardly negotiators then, are they, at this time, prior to what you say the Bureau's policy is?

Mr. DODGE. Yes.

Mr. CRAMER. If that is the policy, I would like to know about it, and I think maybe we ought to find out from the Bureau.

I cannot believe that it is the Bureau's policy to authorize the State to take the State's maximum fixed figure from the review board and go to the owner and say, "Here, take it or leave it."

Mr. DODGE. They don't say "Take it or leave it." That is the Bureau's position, and where the negotiating comes in under that policy is they are supposed to go there and make the offer and then he is supposed to do a salesman's job and sell him the proposition of taking that figure.

Mr. CRAMER. That kind of negotiating Khrushchev does. He says, "Here is what I want and if you do not want to give me what I want, do not talk to me."

Mr. DODGE. It isn't that——

Mr. CRAMER. Now, before this so-called Bureau policy was handed down, and if it is I would like to know about it——

Mr. DODGE. Of course——

Mr. CRAMER (continuing). Is it not true that your negotiators—how did you instruct your negotiators about going out and talking to these people? Is it not your duty to make sure that the State pays as little as possible?

Mr. DODGE. Yes.

Mr. CRAMER. Yes. How——

Mr. DODGE. Now, wait a minute. Wait a minute.

Mr. CRAMER. I do not mean as little as possible. I mean a fair market value.

Mr. DODGE. A fair price; yes.

Mr. CRAMER. Yes.

Mr. May.

Mr. MAY. Mr. Dodge, this is a controversy that is raging now, I guess, throughout the country, and it is being debated what would be the better practice.

Mr. DODGE. That's right; it is.

Mr. MAY. There are those people who would say that when the review board has analyzed a case and come up with a fair market value, that in justice to the property owner perhaps that figure should be given.

Mr. DODGE. That's right.

Mr. MAY. And some States do have a practice, when a reasonable market—fair market—value figure has been established, that they make the one offer. So I believe this debate is still going on and——

Mr. DODGE. Whenever——

Mr. MAY. There is certainly some merit to both sides. It is a very difficult question.

Mr. DODGE. That's right.

Mr. MAY. But the fact remains that the practice in Massachusetts, up to at least recently——

Mr. DODGE. Well, even now, sir, I will tell you we haven't gone into the one-price policy.

Mr. MAY. But where the procedures fell down in Massachusetts is that the negotiators were given no definite instructions.

The negotiator simply got a review board figure and then it was up to him to go out and start dealing with the property owner. Is that right, Mr. Dodge?

Mr. DODGE. Not a hundred percent.

Mr. MAY. Well, we have already seen some examples of it.

Mr. DODGE. There are examples.

Mr. MAY. We will see a number of examples later on in these hearings as to the freedom with which the negotiators operated and sometimes, certainly, not in justice to the homeowner.

Mr. CRAMER. Well now, Counsel, I am not arguing a one-price policy one way or another, but if the review board's sole responsibility under the legislation is not to fix fair market value but to fix maximum value, then how can the Bureau or anybody else accept that as the proper figure for negotiation?

That is the most the State could possibly pay.

Mr. MAY. That is true, and they are in large difficulty.

It is debatable whether this is the fair market value price or is this in the upper limits, the maximum figure.

Mr. CRAMER. Well, the way—according to the figures which Mr. Beasley presented, and maybe he should be here to testify on this—the maximum figure fixed by the review board in many instances was less than what was actually paid in the negotiations and in most instances was greater than the average of the appraisals submitted.

Mr. DODGE. Well, it was never less—it was——

Mr. CRAMER. So it was really a maximum figure.

Mr. DODGE. Set by the review board because that is all an applicant can offer by law. We can't settle the case any higher than the review board figure.

Mr. CRAMER. But lower?

Mr. DODGE. Yes.

Mr. CRAMER. If, in the opinion of your negotiator and your department, and the looking at the appraisals, you feel that that figure is too high, then it is your duty to try to negotiate at what you think is the fair value?

Mr. DODGE. Well, actually, sir, it has worked out that the public is becoming wised up to the fact that there is a review board figure and they do hold out until they get it.

When you get down to the practical matter, that's what it is.

Mr. CRAMER. Well, do you not think that something should be done to give the review board authority, or someone, to fix what the fair market value is, and not what the maximum value is, to be used by the negotiator?

Could not the——

Mr. DODGE. You are getting into a very technical ground there where there would be an awful lot of differences of opinion, whether that is better than the present system or not.

It was presumed under the present system that a good negotiator would go out and try to settle a case for less money, and that he would be successful in a great many cases and settle for less, but as time went on it was found that it doesn't work because, as I say, the people know that there comes a time when we just have to have that review board figure because all they have to do is petition and go to the attorney general's office, and they can practically force it.

Now, I venture to say that 99 out of a hundred—in fact, a bigger percentage of cases than that—which I processed, asked for the review board figure.

Mr. CRAMER. Of course, if the figure that the review board gets is fraudulent to start with, it means the maximum is fraudulent and the amount paid excessive.

Mr. MAY. Mr. Chairman, we will have considerable evidence in the hearings to come, and Mr. Dodge's testimony later in the hearings will be most essential.

So, at this time, I would request that Mr. Dodge not be released from his subpoena but be discharged today subject to call of the Chair at a later time during the hearings.

Mr. CRAMER. Let me ask him one more question, if you are going to dismiss him. Mr. Jacobs, for instance, as I understand it, was representing both owners and the State as a fee appraiser. Do you see anything wrong with that?

Mr. DODGE. Well, I don't think it's good practice; no.

Mr. CRAMER. Did you have any knowledge that there were any of these fee appraisers representing both sides?

Mr. DODGE. No, I certainly don't.

Mr. CRAMER. Well, you know it now, do you not?

Mr. DODGE. Well, yes.

Mr. CRAMER. And you think it is bad practice. Is that right?

Mr. DODGE. I would say it is bad practice, yes.

Mr. CRAMER. Have you attempted to do anything about it since it came to your knowledge?

Mr. DODGE. Well, of course, I believe that Mr. Jacobs isn't getting any more assignments. That is one thing. So he can't represent both sides now.

Mr. CRAMER. Have you done anything else? Have you issued any regulations? Have you suggested any regulations to that effect?

Mr. DODGE. Well, how could I regulate something that I don't know is going on?

Mr. CRAMER. Well, I thought that you just said that you realized it was going on.

Mr. DODGE. Yes, but I got to know it at the time it is going on to do anything about it.

Mr. CRAMER. Well, you know it is going on now. Do you have any intention of issuing regulations or doing anything to stop it?

Mr. DODGE. Well, I am open for suggestions. What can I do? I don't know what I can do. What can I do?

Mr. CRAMER. You are head of the department. I am asking you.

Mr. DODGE. I mean, what kind of regulations can I do to stop it?

Mr. CRAMER. You can request that a proper regulation be issued, I would assume, by the proper parties that no one be hired as a fee appraiser who has a conflict of interest in the form of also appraising for the private owners.

Mr. DODGE. Well, if we know that they have a conflict of interest we don't use them.

Mr. CRAMER. Well, you do not at this time, when they qualify, require them to sign a statement to that effect, do you?

Mr. DODGE. Yes.

Mr. CRAMER. No, you do not, not to the effect that they do not represent any of the property owners.

Mr. DODGE. Yes, we do. They all have to sign a nonconflict of interest.

Mr. MAY. On a given property?

Mr. DODGE. Oh, yes. Oh, I see what you mean—that they should either appraise entirely for the department or entirely as an outside appraiser? No, we don't require that.

Mr. MAY. Well, that might be too stringent a regulation, too. It would all depend, maybe, on a given project or the same section of a project.

You would have to give it some thought before you came out with a regulation.

Mr. DODGE. Well, we certainly frown on a man taking work for us on, let's say, parcel 1 of a project—well, let's say Pittsfield. We don't have a project there at the present time, and then possibly appraising against us on parcel 5 of the same project.

Mr. CRAMER. That is what we are talking about.

Mr. DODGE. We would frown very definitely on that. If we found that that was happening we certainly would——

Mr. CRAMER. Well, the statement that he signs could contain that condition, too, could it not?

Mr. DODGE. It could.

Mr. CRAMER. It would not be much of a job to amend the statement that he has to sign now to include that condition, would it?

Mr. DODGE. No, it wouldn't.

Mr. CRAMER. Well, I trust that you will give some consideration to it.

Mr. DODGE. I will recommend it.

Mr. JOHNSON. Mr. Dodge, I would like to ask just one or two questions. Yesterday we heard from Mr. Hopkins.

Mr. DODGE. Yes.

Mr. JOHNSON. As I understand it, he was the department's appraiser and also the negotiator on the property that was involved.

Mr. DODGE. No.

Mr. JOHNSON. He was not?

Mr. DODGE. Not the negotiator. He is a negotiator, making an appraisal on the property. You want to get that "negotiator" title straightened out. It doesn't mean that he negotiates. That means that he—that is just a name, that is all it is. We take negotiators and we make everything out of them.

Mr. JOHNSON. That probably has been confusing the property owners as well as the Congress. Yesterday he testified here as a negotiator, yet his duties were an appraiser of the department.

Mr. DODGE. That's right.

Mr. JOHNSON. Now, also he was a temporary employee. I would like to find out just a little bit more about the temporary employee status. They work under your supervision, I presume?

Mr. DODGE. Yes.

Mr. JOHNSON. Why are they kept in a temporary status for a 6-month period? This gentleman, I think, testified yesterday that he had been with you 5 years.

Mr. DODGE. Well, of course, all these men were originally hired under the first—or, that is not all of them, but they were started in that particular type of a title. A man was first hired under the first bond issue which permitted the department to hire temporary help for the period of what they called the emergency, and the emergency is still going on.

They can hire temporary help. Now, these men have been hired as temporary help.

There has never been any examination to fill these positions on a permanent basis until last year.

Mr. JOHNSON. And they have been on a temporary status ever since you started this Interstate——

Mr. DODGE. Some of them came in on the very first and they are still there, yes.

Mr. JOHNSON. As I understand it also, they are not required to give full time to the State.

Mr. DODGE. Oh, no, that is incorrect.

Mr. JOHNSON. That is incorrect?

Mr. DODGE. That is incorrect.

Mr. JOHNSON. Does Mr. Hopkins have any other employment besides being the negotiator—

Mr. DODGE. Yes, but probably I can't answer for Mr. Hopkins on that score.

I don't know whether he does or not, but generally speaking, there is nothing to prevent a man from working at something else on his own time. But he still is required to give the 7½ hours a day to the State in the regular working day.

Mr. JOHNSON (presiding). Is there any further questioning of Mr. Dodge?

If not, Mr. Dodge, you heard the counsel's request, that you will be held under the subpoena and you will be dismissed for the present, but you will be recalled by the Chair when needed to give further testimony in this case.

Mr. DODGE. That doesn't mean so soon that I should stay in Washington, does it?

Mr. MAY. No. You will be notified or given reasonable notice for your reappearance.

Mr. DODGE. All right.

Mr. JOHNSON. The next witness will be Mr. Lester J. Ellis. Mr. Ellis, will you raise your right hand?

Do you solemnly swear that the testimony that you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ELLIS. I do.

TESTIMONY OF LESTER J. ELLIS, REALTOR, MILTON, MASS.

Mr. JOHNSON. Be seated.

Mr. MAY.

Mr. MAY. What is your full name?

Mr. ELLIS. Lester J. Ellis.

Mr. MAY. And where do you reside?

Mr. ELLIS. 29 Maitland Street, Milton.

Mr. MAY. That is M-a-i-t-l-a-n-d?

Mr. ELLIS. That's right.

Mr. MAY. Since October 1958, what has been your business?

Mr. ELLIS. I have been in the real estate business.

Mr. MAY. As a real estate consultant and appraiser?

Mr. ELLIS. Yes, sir.

Mr. MAY. Are you a registered professional engineer?

Mr. ELLIS. Yes, sir.

Mr. MAY. What has been your previous experience, Mr. Ellis?

Mr. ELLIS. Before 1958?

Mr. MAY. Yes.

Mr. ELLIS. After graduating from the University of New Hampshire in 1923, I became employed by MDC, in the metropolitan district commission, which is part of the State, on October 10, 1923.

The following December I took the civil service examination for grades 1 and 2 and was then appointed the following April of 1924 by the department of public works as a grade 2 engineer.

At that time I did survey work and then worked on road construction down to the cape district, and spent 2 years on maintenance.

So that for 6 years I was down in the Middleboro district of the department. From then or from there I transferred to the Boston office and in 1931 went into the right-of-way division.

MR. MAY. So you have had 27 years of experience with land takings in Massachusetts?

MR. ELLIS. Yes, sir.

MR. MAY. For the department?

MR. ELLIS. Yes, sir.

MR. MAY. And you eventually became the right-of-way engineer?

MR. ELLIS. Yes, sir.

MR. MAY. And so you headed up the right-of-way division for some 12 years?

MR. ELLIS. Yes, sir; in April 1946, I believe.

MR. MAY. And you retired from the department when?

MR. ELLIS. October—November 28, 1958.

MR. MAY. Mr. Ellis, you have been a lecturer on right-of-way procedure and practice?

MR. ELLIS. Yes, sir.

MR. MAY. Written articles for the right-of-way magazines?

MR. ELLIS. Yes, sir.

MR. MAY. Back in 1956 were you not one of the six experts called upon by the Bureau of Public Roads to help them with respect to right-of-way matters?

MR. ELLIS. Yes, sir.

MR. MAY. What happened at that time? Did you come to Washington?

MR. ELLIS. Six of us came to Washington. It was during the summer of one year, to help them establish PPM-21-1, and then the following summer the same six appeared again and revised it somewhat.

MR. MAY. And the other five experts were selected by the Bureau from various State highway departments throughout the country?

MR. ELLIS. We were from the American Association of Highway Officials. They recommended these six to the Bureau.

MR. MAY. And you and these other gentlemen helped the Bureau in establishing the governing regulations with respect to the right-of-way program?

MR. ELLIS. Yes, sir.

MR. MAY. Back in, say, the middle forty's, around 1946, did you draw up a set of instructions and standard requirements for appraisal reports, these to be circulated to the fee appraisers at that time?

MR. ELLIS. Yes, sir. That was headed "Instructions for Appraisers," and it had my name at the end of it.

MR. MAY. And the purpose for that was to explain to the fee appraisers what was expected and what was required of them as far as their appraisals and their reports were concerned?

MR. ELLIS. Yes, sir; because previously, back in the—beginning in the early thirties some appraisers would appraise partly by just stating in the letter their opinion was the value of so much money, and from 1930 and 1931 this had grown tremendously to quite a technical operation at the present time.

MR. MAY. Also thereafter this would enable you to give these instructions to new people who were selected as fee appraisers and to explain to them—

Mr. ELLIS. Yes.

Mr. MAY (continuing). What was required?

I have to point out that for a considerable period of time you, as head of the right-of-way division, were responsible for not only the departmental work but also the fee appraisers in their work?

Mr. ELLIS. Yes, sir; that's right.

Mr. MAY. I would like to read just—I have your instructions here, and I would like to read just a couple of portions. You say:

It is quite important that the appraisals contain as complete and definite information and opinions as possible. Invariably the situation is that if the case is brought to court and we have a full, comprehensive appraisal, there will be in it much valuable information that will be the basis for cross-examination and which will tend to discredit the opinions of the experts of the other side.

Trial of the case is not merely each side offering their opinions of value. The opinions of the experts on either side may be broken down by cross-examination.

Our only hope of breaking down the experts on the other side is by having this complete information in our file in the form of appraisals.

Mr. CRAMER. Well, is it not true, Mr. Ellis, as a matter of fact, the contract they sign with the State to get the appraisal job requires that they, as one of the conditions of the contract and a portion of the contract, that they be prepared to and submit themselves to go on trial, if necessary?

Mr. ELLIS. That's right. It is in the form of a letter, a one-page letter.

Mr. MAY. You also point out the three approaches: The comparative approach, the replacement cost less depreciation, the income approach, suggesting that those three approaches be used whenever applicable on a given piece of property.

Mr. ELLIS. Yes, sir.

Mr. MAY. Is that right? Now, you handled the assignment of fee appraisers and the review of their work up until about 1951 or so?

Mr. ELLIS. That's right.

Mr. MAY. Could you explain what took place at that time, Mr. Ellis?

Mr. ELLIS. In 1949 the State of Massachusetts put through a bond issue to start work for a central road in Boston, and at that time the commissioner at that time, and the whole department, were fearful that this project was so big that everyone was wondering how we would ever carry it out.

It ended up with two-tenths mile of road, with right-of-way costs of \$42 million.

Mr. MAY. \$42 million, and this——

Mr. ELLIS. 42 million and two-tenths million a mile.

Mr. MAY. \$42 million and this was all State money and no Federal aid?

Mr. ELLIS. That's right. In Boston. That is why our division was far ahead when the big highway program of the Nation transpired. We had already—were well along in our way of going through the center of Boston where on one particular mile the total cost of land takings was \$15 million.

Mr. MAY. That project ran from where to where? Do you remember?

Mr. ELLIS. From Boston, Chelsea at the Mystic Bridge, to the Neponset River at the Milton-Boston line.

Mr. MAY. Is that Dorchester?

Mr. ELLIS. Yes, through the center of the city, about north and south through Boston.

Mr. MAY. So that necessitated a quick role within the right-of-way division?

Mr. ELLIS. It did.

Mr. MAY. Up to that point the right-of-way division contained perhaps some 20 men?

Mr. ELLIS. Yes. Probably in 1946 there were about 23 or 4 or 5 men, and it seems as though each week more people were added and more of the former right-of-way men were reassigned back into the right-of-way division, along with myself.

Mr. MAY. Now, Mr. Ellis, you were right-of-way engineer. Did you have help within the department of public works to help you solve your problem?

Mr. ELLIS. No, the right-of-way engineer is alone in running the the department. The main part in the highway department is construction of highways, and they all assume that the right-of-way division can take care of all their own problems, and hope they can do it as fast as they can, such as the plans are not ready—as soon as the plans are ready, and this is practiced throughout the Nation.

Every commissioner of the State highways or administrator wants to get the road built and that is the time that the right-of-way department gets the plans, to find out where the road is going, what property is to be taken, and what the grades are, and the various other considerations that go into appraisals.

So we find that the right-of-way division is always behind, throughout the Nation, because they don't get the plans until practically the time the contract is let.

Mr. MAY. So the emphasis has been placed on construction of the project and not the proper planning and obtaining of the right-of-way?

Mr. ELLIS. That is right. In fact, it persisted until the Bureau of Public Roads insisted that the right-of-way would have to be taken before a contract could be advertised. It boosted the morale of the right-of-way divisions throughout the country.

Mr. MAY. You are always fighting the problem of the construction people wanting to construct the project before proper steps have been taken to acquire the right-of-way?

Mr. ELLIS. That's right.

Mr. MAY. And this creates some great hardship on the people themselves?

Mr. ELLIS. That is true.

Mr. MAY. It is difficult not only for a property owner to be displaced but so much more difficult for him when it is done in a hurry?

Mr. ELLIS. That's right.

Mr. MAY. We had much talk here, Mr. Ellis, about the temporary employees and the lack of a permanent status. That did have a great effect on your operation, did it not?

Mr. ELLIS. Yes. When we started in 1949 and 1951 there was no way to add—up to the time of the bond issue there was no way to add people to the highway department except under the engineering staff, and they would not be hired unless they had some engineering experience.

So, in order to get more people to do the work, the formal nomenclature of the job called "right-of-way negotiator," which was one of four or five that was put in around 1956 and then taken out again, that was a position, a grade III engineering position, in the same pay status that the people were hired in if they would work for the grade III money.

They came in as "negotiators." And we weren't able to get men in the right-of-way division because we couldn't take—we wouldn't be able to get men from the other engineering departments.

They would keep their own good men and we constantly tried to get some of the engineers because in our right-of-way work it is essential that the men understand the plans and cross sections.

So that we were handicapped by that and, as time went on, since 1961, some of our older men retired, and that brought the number of permanent men in the right-of-way division at the time I retired to probably around 25 permanent civil service men and 125 negotiators, except a few years previous to that, in order to raise the pay of some of the men that were doing good work, that had some engineering experience, they were elevated to temporary grade IV, engineer.

MR. MAY. So, as you explained to us earlier, Mr. Ellis, you pointed out that prospects were not right for an employee in the right-of-way division, prospects of advancing, of getting more money. Is that right?

MR. ELLIS. That's right. There are only two ways a—a negotiator could not get out of the negotiating class of the grade III money unless he had some engineering experience, because he wouldn't be paid—he couldn't be paid any more except with a different rating.

MR. MAY. Mr. Ellis, due to this relatively poor future that the temporary employees with the right-of-way division had, there was a fluctuation of people coming and going within the department. Is that right?

MR. ELLIS. Yes; a great many.

MR. MAY. You mentioned to us that it was kind of like a stopping-over place for many people.

MR. ELLIS. Yes, especially for the very qualified people.

If you had a person who was—I forget what the pay was—if it was something like \$4,000, if he was used to making \$6,000 he might get a job there temporarily and we would have liked to have kept those kind of men, but they left for better positions.

MR. MAY. When we spoke with you you also mentioned that you, as right-of-way engineer, had no right to hire new employees. They were hired for you and sent to you.

MR. ELLIS. That's right. They eventually came through, although I, in the past, suggested some of the men and others came to the chief engineer, but they finally advanced—before they all finally had to get to the personnel office, and they got a card and that was sent down and some with grade 1 and grade 2 and grade 3.

And were sent to me and I would interview them, and I would either—they would—I would get a call that "I am sending down two fellows and talk with them," and they would have this card with them.

And then if I thought that with their qualifications we could use them in our work I would say so, and they would go back to the personnel office up in the upper floor and then that would be processed through the civil service.

Mr. MAY. Did you, when these people were sent to you, did you have the right and power to say, "No, I do not want to hire this individual"?

Mr. ELLIS. I could. I could if he wasn't able to fit the work, and sometimes, in talking with them and telling them the duties of the work, they decided that they wouldn't want it.

One of the big hardships that we had was going along with some man who had to stay away, work 150 miles from home and who would have to be away from home 3 nights a week.

And other problems were cars. They could drive their own cars or have a car out of the State cars.

Mr. MAY. Were there occasions when people were sent to you to be employed where you felt that you must employ them?

Mr. ELLIS. No, that wasn't—it wasn't the thing, but we were always looking for men in our group that would be coming and going and we would try to keep the better ones and those that didn't care to do much work would—well, one of our best ways was to switch them around to a less desirable work or have them sent away from home and supervision or something like that.

If a person wasn't a good worker he could—he would sort of fall by the wayside.

Mr. BALDWIN. Could I ask a question? You mentioned if they were not competent you would transfer them a long way from home or switch them to some job with less responsibility. Did you ever take action to terminate them or fire them?

Mr. ELLIS. I did, yes.

Mr. BALDWIN. In other words, there was a procedure by which you could fire a person who was incompetent?

Mr. ELLIS. Yes. There was a time there when Commissioner Callahan—men were coming in and no one would know other than their names, and they would give their qualifications, and you wouldn't know whether they would be able to help you or not in your work, and if they didn't work out, well, I told Mr. Shea, who was in charge of personnel, and they would be terminated immediately.

And some men didn't show up. Others would have some men come in and say how about getting so-and-so a job in your department, and when they found out the duties the person wouldn't want it.

There was another time a man came in and he got a job and he came down on a Friday, and he sort of picked out the general part of the work in the Southeast Expressway that he would like to work in, and when he came back that afternoon we had decided that he should be changed to work outside of Boston. And he decided that he didn't want to work any more. We had plenty of those.

Mr. MAY. Mr. Ellis, you mentioned to us that you received people to be employed in the right-of-way division and they were people such as an orchestra leader or a meat market clerk?

Mr. ELLIS. Yes, all lines of endeavor.

Mr. MAY. Now, what sort of functions would these people do?

Mr. ELLIS. Well, where we had that problem that was under the direct supervision of John Thompson, and he arranged to get the most out of his personnel by dividing up probably six or seven types of work.

We had one man who was sort of an advanced man, and he interviewed the people along with the group—where it was going or where it was planned to get the names of property owners, the tenants, the rentals, the lessees, and so forth, and sort of an advanced man to say that the road was coming.

And he could do that. If he was the average man he was interested where he could do that for us and would turn in his report each day.

Another fellow was following up on the demolition of the property and trying to get people out of the property and keeping in touch with them as to when they were going to move.

And then that—we could find from the reports what properties we expected to get. Another group were assigned to the city hall to get assessed values and we had—that was limited to a small group because the assessors didn't want to have a great many people coming in and out of their office.

There was another group that was up in the board of tax appeals, looking up requests for reducing abatements. Others were appraisers and others were negotiators.

Mr. MAY. We have already received some testimony about one of these advance men, Orlando Q. Spagnoletti.

Do you remember how he came to be employed within the right-of-way division?

Mr. ELLIS. Well, he came down, I think—there were some others that came down about the same time or came to the office, and he was sent down and he had this card.

And he was—and he was hired and he had a background of real estate.

Mr. MAY. Now, what sort of work did he do initially?

Mr. ELLIS. In appraising and negotiating he was a negotiator and one of his larger amounts of work was on that central artery that extended along that period, and the practice of the department was to have certain sections of it done as it continued on southerly from Boston out to the Milton line.

Mr. MAY. We have heard that Mr. Spagnoletti came to the department on December 8, 1953. Was he sort of a favored employee?

Mr. ELLIS. Well, in a way, he worked right in Boston when he lived in Boston, he didn't have to work out in Pittsfield or Provincetown a long distance away. He seemed to be able to get along with everyone.

Mr. MAY. Do you recall when you attempted to transfer Mr. Spagnoletti out into another area?

Mr. ELLIS. He was transferred but he never got there.

Mr. MAY. He didn't care much for going so he didn't go?

Mr. ELLIS. No.

Mr. MAY. What happened?

Mr. ELLIS. Well, he always postponed it.

Mr. MAY. If he was simply an employee and you as right-of-way engineer wanted to transfer him you could normally transfer him, couldn't you?

Mr. ELLIS. Yes. It wasn't a matter of life and death that he would have to go to a particular job, it was just a shifting of men in different locations, because as soon as one job was finished so that the person could finish that job to go to the other, the other one might be 20 miles away or a continuation of the next section.

Mr. MAY. I will read you your quotes when you spoke to us in Boston about Mr. Spagnoletti. You said that Mr. Spagnoletti was in favor with the fourth floor, and did pretty much as he pleased, if he transferred to the western part of the State he wouldn't go he just didn't go, he was friendly to the group downstairs, so no one could cross him up, I couldn't fire Spagnoletti, he was well acquainted, he always had something to do except his work or what we wanted him to do, he was around.

Is that pretty much it?

Mr. ELLIS. In that part that he didn't do any work, I didn't mean that. He always had plenty to do. He worked out in the center a great deal of the time. And after that job closed down he came in.

Mr. MAY. That happened early in—he was out in Dorchester, and we heard evidence the first day about what Mr. Spagnoletti was doing out in Dorchester. After that, he didn't work, Mr. Ellis, he just kind of drifted around, is that right?

Mr. ELLIS. He was attached to the Boston office and did some preliminary appraisals, and later he got on the Dorchester job.

Mr. MAY. Isn't it clear that Mr. Spagnoletti did pretty much as he pleased after the Dorchester work?

Mr. ELLIS. I don't know just how to say it. He didn't have to work as hard as some of the others.

Mr. MAY. Mr. Ellis, you didn't care a great deal for Mr. Spagnoletti as an employee, did you?

Mr. ELLIS. I thought he was better socially than as a worker. But he was well liked by people.

Mr. MAY. Yes. We are talking about his capacity, his willingness to work, his diligence, his competence, that just didn't exist.

Mr. ELLIS. He would work if he wanted to.

Mr. MAY. But he didn't want to work?

Mr. ELLIS. He worked there over a long period, but it wasn't as strenuous as some of the others.

Mr. CRAMER. If he wouldn't work, did you try to get rid of him?

Mr. ELLIS. He wasn't so bad that he was any problem. He would postpone doing the work.

Mr. CRAMER. He didn't—

Mr. ELLIS. He always had something ahead of him to do.

Mr. CRAMER. It isn't that he didn't do it, it is that he postponed it.

Mr. ELLIS. Some of it.

Mr. CRAMER. It is a pretty fine line, I find difficulty in drawing it. Didn't you try to get rid of him?

Mr. ELLIS. No, sir.

Mr. CRAMER. Why not?

Mr. ELLIS. He spoke of leaving.

Mr. CRAMER. Why didn't you take him up on it?

Mr. ELLIS. Well, he was 1 of the 150, and I had to share my time with the other 149. I wasn't talking to him every hour.

Mr. CRAMER. I didn't say that. If he suggested he wanted to leave, why didn't you encourage him to do so?

Mr. ELLIS. I did, in a way. I thought it would be a good thing for him if he wanted to go into the real estate business.

Mr. CRAMER. Did you try to get rid of him?

Mr. ELLIS. No, I didn't tell anyone that I thought he ought to leave.

Mr. CRAMER. Why not, if he wasn't doing his work, or postponing?

Mr. ELLIS. I said he wasn't any big problem.

Mr. CRAMER. He just wasn't earning his salary, is that right?

Mr. ELLIS. Well, he could do good work if you would get him to do it. And at one time he worked out in the western part of the State, I had always planned that he would do preliminary work.

Mr. CRAMER. Who was the boss?

Mr. ELLIS. I was the boss.

Mr. CRAMER. And yet he postponed the work, and you knew it, and he wasn't doing the work and you didn't try to get rid of him?

Mr. ELLIS. That is right.

Mr. CRAMER. Why?

Mr. ELLIS. I say, he was only one of the 150.

Mr. CRAMER. But you knew he wasn't doing his work, why didn't you try to get rid of him?

Mr. ELLIS. Well, he was around——

Mr. CRAMER. That is what I am complaining about, that is what you should have been complaining about, he is just around, on the payroll. You don't mean you had 150 more like that?

Mr. ELLIS. We wouldn't have been able to accomplish our work like that.

Mr. CRAMER. Isn't it true that you didn't fire him because you didn't think you could? He knew too many people, he was too much of a social climber?

Mr. ELLIS. He was friendly with most of the people, he was friendly with——

Mr. CRAMER. With whom?

Mr. ELLIS. With politicians and the others who were in the department.

Mr. CRAMER. He had too many friends to fire him, that is what it amounts to?

Mr. ELLIS. He was a local, city fellow that knew a lot of people. He was born in Boston and had been around a lot before he came to the department.

Mr. CRAMER. He knew a lot of people in city hall, did he not, politicians?

Mr. ELLIS. I think he knew a lot of people, much different from some of the others that came from some other part of the State.

Mr. CRAMER. That was pretty good job insurance, wasn't it? He knew a lot of important people.

That is all.

Mr. MAY. Mr. Ellis, did there come a time when Mr. Spagnoletti thought he should get more money?

Mr. ELLIS. Yes, sir.

Mr. CRAMER. He cashed his insurance policy?

Mr. MAY. What happened at that time?

Mr. ELLIS. As I said before, it was impossible for any negotiator, title grade 3, to get a promotion. And when some once were promoted from that title to engineering they, others thought they should try to get a raise. There was one, and he thought of a way of getting a promotion that wouldn't be in the engineering line, and that was to revive another title——

Mr. MAY. Right-of-way agent?

Mr. ELLIS. Right-of-way agent. And, by the way, these titles came in 1936 or 1937, similar to the Pennsylvania right-of-way system, where they called them assistant right-of-way agents and negotiators, and so forth, and those were used temporarily around 1936 or 1937 or 1938, and then they were stopped, and in 1941 one of those was revived by civil service, they would recognize a title like that with pay, and up to that time I and others in the right-of-way felt that we shouldn't have a person in that title because it was worded about the same way as the right-of-way engineer.

Mr. MAY. In other words, if somebody took over that function, they would be higher than you?

Mr. ELLIS. About the same.

Mr. JOHNSON. Mr. Ellis, I would like to ask one question. Mr. Spagnoletti was one of these temporary employees, too, wasn't he?

Mr. ELLIS. Yes.

Mr. JOHNSON. Is he still temporary, or permanent?

Mr. ELLIS. No, he has left.

Mr. JOHNSON. But he had been temporary all the time he was employed by the right-of-way division?

Mr. ELLIS. Yes, we only had a few civil service employees and those had been there for many years, many over 30 years.

Mr. CRAMER. So he looked back in the files and found this defunct job and decided that would be a good spot for him, so you opened up those jobs again and appointed him right-of-way agent?

Mr. ELLIS. We changed a lot of times, changing the head of the departments, and he finally went in.

Mr. CRAMER. He went on out over you and you recommended it for him?

Mr. ELLIS. He got it. That job was a right-of-way engineer and a right-of-way agent, and it was a similar job in different status.

Mr. CRAMER. You didn't want a right-of-way agent established again?

Mr. ELLIS. I wasn't happy about it, but he kept hounding me for a chance to make more money.

Mr. CRAMER. And he got it?

Mr. ELLIS. It wasn't a great deal more.

Mr. BALDWIN. Will the gentleman yield? Do I understand correctly that you recommended him for it?

Mr. ELLIS. I did.

Mr. BALDWIN. Why?

Mr. ELLIS. So that he could get a little more money, he probably would be more interested in working out in the west part of the State.

Mr. CRAMER. He could postpone the work out in the west part of the State, then, he wouldn't be postponing it around Boston.

Mr. ELLIS. That is what happened to him.

Mr. SCHWENGEL. As a professional engineer and a public servant which you were supposed to be, is this a pattern in Massachusetts to reward inefficiency?

Mr. ELLIS. No, sir.

Mr. SCHWENGEL. How come, then, that you, being in the position that you were in, approved this promotion, were you forced in some way to do this by somebody else's desire?

Mr. ELLIS. No.

Mr. SCHWENGEL. Why would a man like yourself, with a professional status, deliberately promote a man like this?

Mr. ELLIS. There were probably 100 getting the same pay, and each one would try to get more money, but that 100 had to stay as they were. And he found that there was a possibility of getting out of this dilemma of staying in grade 3, and he asked—

Mr. SCHWENGEL. But you must have known that there were others in that group of 100 that were more deserving than he was—or were they?

Mr. ELLIS. As far as work they were, probably. He could do the work but he was a little reluctant.

Mr. SCHWENGEL. As far as work they were deserving of it, and for devotion to duty they were deserving, but the others didn't have the connections he did, is that right?

Mr. ELLIS. Well, you could say that; yes.

Mr. SCHWENGEL. Have you heard about the Boston Club?

Mr. ELLIS. Yes, sir.

Mr. SCHWENGEL. Are you a member of the Boston Club?

Mr. ELLIS. I was a social member, a small membership fee.

Mr. SCHWENGEL. What are the purposes and objectives of the Boston Club?

Mr. ELLIS. It is just a place near the statehouse where you can go in and eat. People go there, it is right near the statehouse.

Mr. SCHWENGEL. Could anybody belong to it?

Mr. ELLIS. I believe so. You submitted your name, and I think it was just people that would be around there, there is no special group.

Mr. SCHWENGEL. But this didn't have the reputation of being the political influence club of Massachusetts?

Mr. ELLIS. No; it is just because it is near the statehouse, in downtown Boston.

Mr. SCHWENGEL. And it is a convenient place for those people who had political influence to eat and fraternize and so forth?

Mr. ELLIS. A good many go in and out of there.

Mr. SCHWENGEL. This man that you promoted probably had connections in the Boston Club, is that right?

Mr. ELLIS. He was there a few times. I don't know.

Mr. SCHWENGEL. But you must have had connections—

Mr. ELLIS. There is no one up there that ran anything, outside of the Boston Club, they just ran this place that was a meeting place for a great many functions, and they ate there, and it was a place to meet, and a good many met because it was handy downtown, and the men went there with their wives and they would eat and go to the show and so forth, as far as I saw.

Mr. MAY. Mr. Ellis, Mr. Spagnoletti wanted more money and found this right-of-way agent job, and talked to the people on the fourth floor, is that right?

Mr. ELLIS. Yes, sir; he would have to, because the man who recommended him wouldn't necessarily mean that a person would get a promotion. A good many men that used to work with me used to write a recommendation for people that worked for them to see if I wouldn't in turn recommend them to the chief engineer, and then it would be up to the chief engineer if he wanted to do it.

Mr. MAY. Who suggested that you write the letter recommending Mr. Spagnoletti?

Mr. ELLIS. He did.

Mr. MAY. Anybody else other than Mr. Spagnoletti?

Mr. ELLIS. No; there was no one that approached me to write the letter except himself, many times he asked me.

Mr. CRAMER. He just told you he wanted the same salary and high position that you had under a different title and you let him have it?

Mr. ELLIS. It wasn't the same position and it wasn't the same salary, it was a name similar to the name in other States, similar to the head of the right-of-way department in each State, each State has a different name for it, and it has different salary ranges.

Mr. MAY. I have a copy of your letter here, I will read it. It is dated August 13, 1957, from right-of-way engineer, attention Edmund C. Sheridan, subject—who was Edmund C. Sheridan at that time, was he director of personnel?

Mr. ELLIS. Yes, sir.

Mr. MAY (reading):

Subject: Recommendation for promotion. Orlando Q. Spagnoletti has been in the right-of-way division since December 8, 1953, with the title of right-of-way negotiator. Since that time, he has handled major projects and preliminary estimates, appraisals, and negotiations. His experience before coming to the right-of-way division was in the real estate division as an appraiser, broker, and building engineer from 1945 to 1953, and has caused him to become well informed on real estate values and building construction costs in the greater metropolitan area. The proposed workload for the right-of-way division in this area includes many major projects such as the belt Route 1 from the route to Dedham and connections to Route 28, 3, and group 2, will necessitate the need of a qualified appraiser to estimate the land damages on various proposed locations in order for the department to determine the most practical and economical route. This work included the assembly of the possible sales values in Greater Boston and the surrounding areas. At the present time there is a definite need for a preliminary estimating section working out of Greater Boston reporting direct to the new right-of-way engineer and his division. The work will include supervision of other personnel as the workload warrants. I believe that Mr. Spagnoletti is well qualified to supervise this work, and recommend that he be given a temporary promotion to right-of-way agent grade—

is it 5A?

Mr. ELLIS. Yes.

Mr. MAY (continuing):

with his duties and responsibilities to be as outlined above.

Respectfully submitted.

Mr. L. J. ELLIS,
Right-of-Way Engineer.

Mr. Kopecky, did you check the payroll records of Mr. Spagnoletti?

Mr. KOPECKY. Yes, I did. And under date of September 12, 1957, there was a form "Notice of Change in Status of Official Payroll Employees," and this form shows that Mr. Spagnoletti's classification was changed from right-of-way negotiator to right-of-way agent, and his salary changed from \$95 to \$113.25 a week.

Mr. CRAMER. May I ask a question about the letter?

Did Mr. Spagnoletti help you draft the letter too?

Mr. ELLIS. No.

Mr. CRAMER. He didn't help you find justification?

Mr. ELLIS. He just asked me to write the letter.

Mr. CRAMER. He didn't suggest how the justification could be found?

Mr. ELLIS. No, I had that in mind.

Mr. MAY. Mr. Kopecky, were you able to obtain a job description of right-of-way agent?

Mr. KOPECKY. Yes. And I quote from that as follows, the DPW record, under the heading of "duties":

Under general supervision to supervise the making of technical appraisals of real property needed for highway purposes, to supervise and assist in the negotiating and settling with property owners for land takings and easement and to perform related work as required.

Examples of duties: Supervising the review of preliminary highway plans, and of investigation of land use and values of property within the proposed right-of-way area. Making preliminary easements of costs for land damages in the proposed location with a view to determining if alternate locations could be utilized at less cost in submitting recommendations which are in the best interest of the Commonwealth. Reviewing appraisal made by employees and/or private appraisers, and recommending rejection or acceptance of the appraisals. Supervising the securing of releases including, if required, right-of-entry, adjoining damages, and recommending final awards and changes in plans where necessary.

The following are required: Thorough knowledge of the methods, procedures, and practices used in negotiating for and appraising real and personal property. Thorough knowledge of methods of making highway location surveys and preliminary highway plans. Thorough knowledge of property values and uses and the methods of processing land-taking transactions. Considerable knowledge of laws governing real estate transactions, conveyances, and eminent domain. Ability to review appraisals with technical accuracy both as to method employed and values derived. Ability to plan and supervise the work of technical assistants or consultants. Ability to express ideas clearly and concisely, orally and in writing. Ability to convey, understand, and follow fairly complex oral and written instructions. Ability to establish and maintain effective working relationships with public officials and the general public contacted in the work.

Mr. MAY (reading):

Ability to establish and maintain effective working relationships with public officials and the general public contacted in the work.

The first day we heard about one contact that Mr. Spagnoletti made with Mr. Beaulieu, and he told that Mr. Beaulieu for 50 percent of the money he would get Mr. Beaulieu more than the State offered.

Actually, Spagnoletti did get this title and that raise, but he did not actually perform these duties?

Mr. ELLIS. No. These are the duties, as I understand it, copied from the Pennsylvania duties back in 1936 and 1937. And they actually did put a double set of right-of-way people in there for a while with that string of duties. And then the nomenclature of those duties was dropped. And it was only a way of him getting a raise.

Mr. MAY. If Mr. Spagnoletti had in fact carried out these duties there would have been little need for you in the department?

Mr. ELLIS. That is right. It wouldn't work. The main part was to do that preliminary engineering; we had no preliminary section.

Mr. JOHNSON. Mr. Ellis, was it known by you that Mr. Spagnoletti was making this type of contact while doing the business of the State?

Mr. ELLIS. No, sir.

Mr. MAY. As to their property settlements?

Mr. ELLIS. That is right. The only settlements he was making was out there in Boston and Dorchester to work on that outer job. Another time he did some preliminary work in the office.

Mr. MAY. Along that line, I would like to establish this very clearly on the record.

Mr. Chairman, Mr. Ellis is a noted figure in the right-of-way field throughout this country. And we traveled around the country and people have mentioned Mr. Ellis, what an honorable man he is, always has been, and he has been respected throughout the years by right-of-way people. And yet Mr. Ellis was right-of-way engineer in Massachusetts in the department while many of these activities about which we have been hearing took place, and some more we will hear about later in the hearings.

Mr. Ellis, did you ever suspect while you were right-of-way engineer that any of these activities were taking place?

Mr. ELLIS. No, sir.

Mr. MAY. Did you ever have any reason to believe that they were taking place?

Mr. ELLIS. No, sir.

Mr. MAY. You were satisfied that you and your people were doing the best possible job with all the handicaps that you did have?

Mr. ELLIS. That is right. I had a regular chart there, and it went through people and their supervision. Each person was supervised, and it went through a line of four people, myself as right-of-way engineer; Mr. Dodge as assistant right-of-way engineer, and there were three supervisors. The State was divided into three parts, and each of these three men had a group underneath him, and the three supervisors would be out on every job and see every property, and they were the ones that were in the field on the spot with the appraiser, and outside of the office group, each man in the field was listed and a daily card was sent in, and they came to the office at least once a week, they were to write on the back of the—the negotiators were supposed to report their activities each day on the appraisal sheet of that case, and all the precautions were taken to handle the thing in a good workmanlike manner.

Mr. MAY. Mr. Ellis, along this same line, when we spoke with you in Boston we showed you certain documents, we showed you where State appraisals had been revised upward in many cases. You were not—and this happened while you were in the right-of-way department, and you had never been aware that these things were happening, is that right?

Mr. ELLIS. That is right.

Mr. MAY. As a matter of fact, on one occasion we showed you an unsigned, undated phantom appraisal, and you said you knew nothing about it, had no idea it was going on, and you termed it an improper act.

Mr. ELLIS. I don't know how it would get to the review board or how they would treat it when it was different from what had been done in thousands of other cases.

Mr. MAY. Later in the hearings we will get to that phantom appraisal, and that is exactly what it is, it is raising the departmental figure from \$60,000 to some \$90,000. But these are things that you didn't know about.

Mr. ELLIS. That is right.

Mr. MAY. And I want the record very clear on that point.

Mr. ELLIS. They could be done because they didn't come into my office, that report that you spoke of.

Mr. MAY. One or two other points here, Mr. Ellis. First, did you consider Mr. Carlton Colburn and Mr. Harvey Hamilton qualified, reliable, good employees?

Mr. ELLIS. Yes, sir.

Mr. MAY. There came a time when Mr. Colburn and Mr. Hamilton were transferred out of the Worcester district. Can you tell the committee how that came about?

Mr. ELLIS. My memory is that Ed Sheridan asked me if he could be—if Colburn could be transferred out of Worcester, and I said, "Yes."

And he said, "Write a letter."

I said I would write a letter. I wrote a letter to the chief engineer—no, I wrote a letter to Colburn, telling him that he was transferred to the Greenfield office, because the right-of-way—my right-of-way man in the Greenfield office was leaving, retiring. And he and Hamilton were transferred. I never discussed it further even up to now with Mr. Sheridan, I never heard from the chief engineer or commissioner or associate commissioners or anyone in that line about it since the day I wrote that letter. And I was constantly asked by Colburn, "why was I transferred," and I told him, like I can say today, "I don't know why."

Mr. MAY. Mr. Ellis, the point is, Mr. Sheridan asked you to transfer Colburn and Hamilton out of Worcester.

Mr. ELLIS. That is right.

Mr. MAY. And you didn't ask Mr. Sheridan why he wanted a transfer?

Mr. ELLIS. No, I didn't.

Mr. MAY. You simply transferred him out of Worcester?

Mr. ELLIS. I did.

Mr. MAY. Mr. Chairman, I would like to make Mr. Ellis' letter and the change in the payroll status exhibit 23A and 23B. I have no further questions for Mr. Ellis.

Mr. JOHNSON. Without objection the exhibits will be included in the record.

(The documents referred to were marked exhibit 23A and 23B and will be found in the files of the committee.)

Mr. MAY. I would like to thank Mr. Ellis for his help and cooperation in Massachusetts.

Mr. CRAMER. I have some questions.

Why did Mr. Sheridan have so much influence over your decision? He would just say he wanted a change made and you would make it. Why?

Mr. ELLIS. He was in charge of personnel. The idea of changing a person was a common thing, a person might come in to work on Friday, and suddenly he would be shifted to another part of the State. A great many persons were transferred within the department. And there was an opening up in Greenfield, because Frank Hechinger was retiring, and it was easy enough to do. And the reason I didn't attach significance to it since then is that no one ever spoke about it, I didn't run the whole department, and if it was something wrong it could be rectified in a minute. And the reason nothing happened for 3

weeks was because Mr. Colburn was in an automobile accident, and Mr. Hamilton, they came from Worcester to Boston, 50 miles, and on the way they had an automobile accident, and nothing happened for 3 weeks. And then when he did come back he had been transferred. And no one spoke to me about it to change it or that it was wrong.

Mr. MAY. Actually Mr. Colburn didn't go to Greenfield after the accident, when he recovered he was put to work in Boston?

Mr. ELLIS. That is right, at the Greenfield office.

Mr. JOHNSON. Any further questions of Mr. Ellis? If not, you may be excused, Mr. Ellis.

The next witness is Mr. Edmund C. Sheridan.

Will you raise your right hand?

Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SHERIDAN. I do.

Mr. JOHNSON. Are you represented by counsel?

Mr. SHERIDAN. I am, sir.

Mr. JOHNSON. Would you introduce your counsel?

Mr. SHERIDAN. Mr. Francis McLaughlin, 1411 K Street, Washington, D.C.

Mr. JOHNSON. Mr. May.

TESTIMONY OF EDMUND C. SHERIDAN, ACCOMPANIED BY FRANCIS X. McLAUGHLIN, COUNSEL

Mr. SHERIDAN. Mr. Chairman, may I make a brief statement before I start?

Mr. JOHNSON. Yes.

Mr. SHERIDAN. Mr. Chairman and members of the committee, reference has been made in previous testimony to one of the former functions of my position as an employee of the department of public works. I readily acknowledge that I have been handling what has been termed as patronage, in that I received the names of persons to be considered for employment within the department.

Mr. SCHWENGEL. I can't hear, Mr. Chairman.

Mr. JOHNSON. Mr. Sheridan, I think first we should proceed with the questioning. And the statement should be presented to the Chair here, and we can look it over.

Mr. SHERIDAN. I didn't hear you.

Mr. JOHNSON. The Chair will rule that we will proceed with questioning, and the statement you would like to make will be presented to the Chair and we will see if it will be allowed in the record.

Mr. SHERIDAN. Do you want to do that now?

Mr. JOHNSON. We are going to proceed with the questioning, and you can pass up your statement. The rules of the committee are that the statement should be presented 24 hours in advance.

Mr. McLAUGHLIN. We understand that, Mr. Chairman, but some of the testimony referred to was given less than 24 hours ago.

Mr. JOHNSON. Mr. Constandy, you may proceed.

Mr. CONSTANDY. Counsel, at the conclusion of the testimony by Mr. Sheridan if you feel that there are matters which have not been ac-

tually explained in the question and answer process, perhaps at that time you may request of the Chair permission to make such statements as you feel would be necessary. Mr. Sheridan, will you state your occupation, please?

Mr. SHERIDAN. I am administrative assistant to the commissioner of public works, Commonwealth of Massachusetts.

Mr. CONSTANDY. How long have you been administrative assistant to the commissioner?

Mr. SHERIDAN. April 1958.

Mr. CONSTANDY. Did you have a position within the department of public works prior to that time?

Mr. SHERIDAN. I was personnel director from January 27, 1957, to April 1957.

Mr. CONSTANDY. No, 1958.

Mr. SHERIDAN. I went in as personnel director January 27, 1957, and on April of 1957 I was made administrative assistant to the Commissioner of Public Works.

Mr. CONSTANDY. Did your function change between the job title that you had as personnel director initially and after you became administrative assistant to the commissioner?

Mr. SHERIDAN. Just that I took on more duties.

Mr. CONSTANDY. You took on additional duties. Were you in charge of personnel matters?

Mr. SHERIDAN. I oversaw them.

Mr. CONSTANDY. Can we talk about it through this period as being the same job, though actually it was a difference in job title? At the time you first went to the department in January of 1957 did you remain the same, and when you became administrative assistant you assumed greater duties, right?

Mr. SHERIDAN. Yes.

Mr. CONSTANDY. All during that period you were in charge of personnel matters?

Mr. SHERIDAN. That is right.

Mr. CONSTANDY. Was the hiring for the department of public works done through your office?

Mr. SHERIDAN. It was, sir.

Mr. CONSTANDY. Was the matter of patronage of concern to you.

Mr. SHERIDAN. Was the what?

Mr. CONSTANDY. What has been referred to as patronage, was that your function?

Mr. SHERIDAN. Yes; it was.

Mr. CONSTANDY. Did you have additional duties?

Mr. SHERIDAN. I was liaison between the department and the legislature and the Governor's office, and with other agencies and departments that had anything to do with it.

Mr. CONSTANDY. Now, with the exception of hiring personnel for the right-of-way division, and an occasional transfer problem, were your duties concerned with the right-of-way division? Did you have any responsibilities or authority within the right-of-way division?

Mr. SHERIDAN. Would you repeat that, Mr. Constandy?

Mr. CONSTANDY. Yes. With the exception of hiring personnel for the right-of-way division and an occasional transfer problem, were your duties not concerned with the right-of-way division, and did you

have any responsibility or authority within the right-of-way division?

Mr. SHERIDAN. As such, no, other than the general handling of certain matters when they arose.

Mr. CONSTANDY. Do you want to expand on that?

Mr. SHERIDAN. Would you ask the question, please, that you want me to expand on?

Mr. CONSTANDY. I would be delighted. You joined the department of public works. Whose function was it to assign fee appraisers?

Mr. SHERIDAN. Whose function was it to assign fee appraisers?

Mr. CONSTANDY. Yes.

Mr. SHERIDAN. Mr. Dole's.

Mr. CONSTANDY. Mr. Dole at that time was associate commissioner of the department?

Mr. SHERIDAN. That is right.

Mr. CONSTANDY. Was it anyone else's function to assign fee appraisers?

Mr. SHERIDAN. To the best of my knowledge, no.

Mr. CONSTANDY. Did you at times receive requests from people to be assigned to do appraisal work on a fee basis for the department of public works, or did you receive requests from people to assign others to such work?

Mr. SHERIDAN. I received requests from people to be recommended to be free appraisers.

Mr. CONSTANDY. Who would make these requests of you?

Mr. SHERIDAN. Many.

Mr. CONSTANDY. Who, what type of people would make such requests?

Mr. SHERIDAN. Members of the legislature, members of Congress, members of the Senate, both branches, many people in public life in all phases within the Commonwealth of Massachusetts.

Mr. CONSTANDY. Clergy?

Mr. SHERIDAN. Clergy, yes.

Mr. CONSTANDY. In other words, this cuts across a wide band.

Mr. SHERIDAN. This is a very wide band. If you had let me read the statement, I think I would have covered it all.

Mr. CONSTANDY. Fine. Maybe we can get to the same thing through the question and answer process which is customary.

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. Was it limited to any particular party?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. You would receive requests for such employment or for such recommendation from both major parties, is that correct?

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. Did you receive any requests in regard to Mr. William Jacobs?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. No one has ever asked you to see that he got additional work or got any work, is that correct?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. Mr. William Jacobs himself?

Mr. SHERIDAN. He never.

Mr. CONSTANDY. Mr. Edward De Simone?

Mr. SHERIDAN. Never.

Mr. CONSTANDY. And you would receive these requests. What would you do with them?

Mr. SHERIDAN. I would forward them to Mr. Fred Dole, usually the letter or a memo, and it would be under my signature, and they would be forwarded to Mr. Dole.

Mr. CONSTANDY. Would that sometimes be done too by telephone or personal contact?

Mr. SHERIDAN. No; I personally believe if it was done by phone I think Mr. Dole requested that I send a memo.

Mr. CONSTANDY. Mr. Sheridan, we introduced as an exhibit this morning a certain memo which emanated from your office. I would like to ask you to look at it and see if that is the type of memo you are making reference to now. I also call your attention to a list which bears the names, I believe, of 20 people, which bears the notation on the bottom right-hand corner in handwriting, "From Ed Sheridan." Can you tell us if that came from you?

Mr. SHERIDAN. I have not seen the list.

Mr. CONSTANDY. We are getting it. The list to which I make reference has not yet been submitted as an exhibit.

Mr. SHERIDAN. This is the list that I submitted to Mr. Dole.

Mr. CONSTANDY. That would be typical of the things we are talking about, would it not?

Mr. SHERIDAN. No; it would not.

Mr. CONSTANDY. Would one of them that are there, or several?

Mr. SHERIDAN. I am sorry, I didn't look at these. Is this last list in reference to me?

Mr. CONSTANDY. I think all three of these are in reference to you. I would like for you to look at all three of them and tell us if they were submitted to Mr. Dole.

Mr. SHERIDAN. The last list I do not recognize as being one that I submitted to Mr. Dole.

Mr. CONSTANDY. The notation on the lower righthand corner is what? Would you read it, please?

Mr. SHERIDAN. That is blurred, and it is not my signature.

Mr. CONSTANDY. I don't suggest that it is.

Mr. SHERIDAN. It is also not my list.

Mr. CONSTANDY. Would you look at the list again?

Mr. SHERIDAN. I do not have to look at it, it is not my list.

Mr. CONSTANDY. If you would look at it again, I would like to ask you if the notations on it as to the names bearing the letter "O" or bearing the letter "N" have any significance to you.

Mr. SHERIDAN. No significance whatsoever.

Mr. CONSTANDY. You don't know what those symbols mean?

Mr. SHERIDAN. I do not know what those symbols mean.

Mr. CONSTANDY. Mr. Sheridan, I call your attention to another sheet of paper, and only to the blue sheet of paper which is face up. And I call your attention to the lower left-hand corner and the notation thereon, just the blue sheet.

Mr. SHERIDAN. I am sorry.

Mr. CONSTANDY. Are there initials on that?

Mr. SHERIDAN. Yes; that is my initial.

Mr. CONSTANDY. Will you read that comment, please?

Mr. SHERIDAN (reading) :

Mike, make sure he is on the list.

Mr. CONSTANDY. Does it say anything further?

Mr. SHERIDAN. "E. C. Sheridan," "ECS" with a circle around it.

Mr. CONSTANDY. Is there not also—fine. Thank you.

Mr. SHERIDAN. They have been trying to copy that for years.

Mr. CONSTANDY. Copy what?

Mr. SHERIDAN. That signature.

Mr. CONSTANDY. I don't think they ever will.

Mr. CRAMER. What do you mean, "Be sure and put him on the list"?

Mr. SHERIDAN. That was a patronage list.

Mr. CONSTANDY. Put him on the patronage?

Mr. SHERIDAN. Right, sir.

Mr. BALDWIN. What do you mean, a patronage list?

Mr. SHERIDAN. A list of qualified people whom I thought should be put on the list as fee appraisers, as this one so indicates.

Mr. BALDWIN. Thank you.

Mr. CONSTANDY. I direct your attention back again to the three documents which you initially saw which I have before me.

Mr. SHERIDAN. May I see them, please?

Mr. CONSTANDY. Surely.

The first one reads "From E. C. Sheridan," and it then bears the names of 10 persons and their addresses, and the signature under which is written "James Landers," is that correct?

Mr. SHERIDAN. Yes.

Mr. CONSTANDY. And the second list is addressed to the same, and bears the names of three persons, again signed "Edmund C. Sheridan."

Mr. SHERIDAN. Under that one the name "James C. Landers" should be.

Mr. CONSTANDY. It should be?

Mr. SHERIDAN. It should be; Mr. Dole did not write it.

Mr. CONSTANDY. I am not suggesting Mr. Dole did. Mr. Dole didn't write any of these. The signature on the second sheet does not bear "James Landers"—

Mr. SHERIDAN. I say it should.

Mr. CONSTANDY. It is not your signature?

Mr. SHERIDAN. My signature is there, but James Landers' name should be underneath mine as it is on the first one.

Mr. CONSTANDY. So the name Edmund C. Sheridan as it is written is not in your handwriting?

Mr. SHERIDAN. Mr. Constandy, will you please let me see that?

Mr. CONSTANDY. The confusion, Mr. Sheridan, stems from the fact that there is another name next to your name. The first indication would be that the other person is the one that had written your name, on the first sheet where your name appears. Did you write it?

Mr. SHERIDAN. On the first sheet, signed after the 10 names is "Edmund C. Sheridan, administrative assistant," typed in "administrative assistant." Above that is my signature.

Mr. CONSTANDY. Written by you?

Mr. SHERIDAN. Written by me.

Mr. CONSTANDY. On the second sheet there is also a signature. And is that signature yours?

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. I direct your attention to the second name on the list. Would you read that, please?

Mr. SHERIDAN. James J. Egan, Jr., 29 Pearl Street, Worcester, Mass.

Mr. CONSTANDY. And did you at one time recommend that Mr. Egan be assigned to work as a fee appraiser?

Mr. SHERIDAN. Yes, I did recommend him. I also qualified that on this list, the name "James Landers" shown underneath mine.

Mr. CONSTANDY. I see. Thank you. Now, Mr. Sheridan, your personal office was located where—

Mr. SHERIDAN. On the seventh floor—

Mr. CONSTANDY. Would you let me finish? On what floor of the Department of Public Works Building?

Mr. SHERIDAN. On the seventh floor.

Mr. CONSTANDY. Did you also share an office with Mr. Mike Kelly on the fourth floor at various times?

Mr. SHERIDAN. I did.

Mr. CONSTANDY. And did you also spend time in the office on the fourth floor?

Mr. SHERIDAN. When I was trapped there, yes.

Mr. CONSTANDY. When you were what?

Mr. SHERIDAN. Trapped there.

Mr. CONSTANDY. What do you mean by that?

Mr. SHERIDAN. When I was captured to go to the fourth floor and to be introduced, I had to do something, to handle some matter that the commissioner would want.

Mr. CONSTANDY. Mr. Dodge has testified—

Mr. CRAMER. Wasn't that your job as personnel head to interview people? What do you mean, trapped? Wasn't that your job?

Mr. SHERIDAN. Sure.

Mr. CONSTANDY. Is that a local colloquialism or what? I don't understand it.

Mr. SHERIDAN. There is nothing local at all.

Mr. CONSTANDY. That means you went there involuntarily; you were trapped. What do you mean by that?

Mr. SHERIDAN. No, when I got there I was kept there.

Mr. CONSTANDY. Mr. Sheridan, Mr. Dodge has testified that on occasion you would ask to see the E-28's after Mr. Dole has made his assignment of the fee appraisers on the E-28; is that correct?

Mr. SHERIDAN. On maybe one or two occasions I asked Mr. Dodge to show to me the E-28 form as approved by Mr. Dole when he received it, for one reason.

Mr. CONSTANDY. Will you explain that, please?

Mr. SHERIDAN. Patronage.

Mr. CONSTANDY. Could you explain that?

Mr. SHERIDAN. The list of qualified people that were recommended to me by the members of the then Democratic Party or the now Democratic Party that there was there at the time, I wanted to see that they were getting their sufficient share of work, as I felt that they were as qualified as the members that Mr. Dole was recommending.

Mr. CRAMER. What did you do to find out their qualifications, how did you come to the conclusion that they were qualified?

Mr. SHERIDAN. How did I come to the conclusion?

Mr. CRAMER. You said you recommended people that were qualified, how did you decide that they were qualified?

Mr. SHERIDAN. Because Mr. Dole had never told me they were not.

Mr. CRAMER. You recommended different people than Dole, you said, on a patronage basis, you said also because they were qualified. How did you know that they were qualified?

Mr. SHERIDAN. Because Mr. Dole had interviewed each one of them either by a letter or in person, and he had said that they were qualified, he had never replied back to me that they were not.

Mr. CRAMER. But the names you sent down initially, you didn't know whether they were or not; right?

Mr. SHERIDAN. It wasn't my duty to find out whether they were or not.

Mr. CRAMER. I am not asking you that question, being that it wasn't your duty, you didn't know, right?

Mr. SHERIDAN. I have to assume from the procedure that they were qualified.

Mr. CRAMER. When you initially sent the names to Mr. Dole, you had no knowledge of whether they were or were not qualified, right?

Mr. SHERIDAN. I had to assume that they were qualified if they were looking to be fee appraisers.

Mr. CRAMER. That is a pretty broad assumption, isn't it? If anybody comes in and says, "I know so and so, and I should go on your list, I want to be an appraiser," to you that made him qualified, is that right?

Mr. SHERIDAN. No. As you said, I was personnel director, and one of my duties was to interview that individual, if he came to me I would interview him, I would not send his qualifications to Mr. Dole, but at times if it was a letter, I did send them.

Mr. CRAMER. But if it wasn't—

Mr. SHERIDAN. If it wasn't, I sent a memo to him, such as the one that Mr. Constandy has entered as an exhibit.

Mr. CRAMER. It doesn't say anything about his qualifications, it says his name.

Mr. SHERIDAN. That is right. That is the way it was.

Mr. CRAMER. And you didn't indicate what his background was?

Mr. SHERIDAN. Dole checked the qualifications, and I figured if Dole thought that they were not qualified, he would so have told me.

Mr. CRAMER. The list you sent contained names that you did nothing to check out as to qualifications?

Mr. SHERIDAN. It was not my function to check them out. I assumed that they were qualified.

Mr. CRAMER. What right do you have to assume they are qualified if you didn't even check them out?

Mr. SHERIDAN. Dole checks them.

Mr. CRAMER. You said you assumed they were qualified when you sent the list to him.

Mr. SHERIDAN. That is right.

Mr. CRAMER. How could you assume that they were qualified?

Mr. SHERIDAN. Because I don't believe that there was a gentleman that I interviewed that was looking for a job as a fee appraiser that didn't have some experience at it.

Mr. CRAMER. That answers the question. He judged whether he felt they were qualified.

Mr. SHERIDAN. I didn't.

Mr. BALDWIN. Would the gentleman yield?

Mr. CRAMER. Yes.

Mr. BALDWIN. Mr. Sheridan, do I understand that from the way you describe your actions that you considered you had a position of sufficient authority given to you by the commissioner, that you could in effect veto the appointments of fee appraisers made by Mr. Dole if you so desired, for political purposes?

Mr. SHERIDAN. No, sir. All I did is recommend.

Mr. CRAMER. If you recommended somebody other than Dole had on the list, that amounts to a veto, doesn't it?

Mr. SHERIDAN. No, sir. They would just be added to the list if they were qualified appraisers.

Mr. CONSTANDY. Mr. Sheridan, it comes down to this. There were a number of different people from many different sources. You would receive the name of a person, that person being interested in securing some of the work given out by the department to do fee appraisals. In the normal course of things you would at various times submit those names to Mr. Dole. And Mr. Dole was responsible for assigning fee appraisers; your testimony now is that you left the matter of their qualifications to him, is that correct?

Mr. SHERIDAN. That is right.

Mr. CRAMER. I think the record will show you testified to the effect that he was satisfied as to the qualifications when he sent them down. That is why you put them on the list and asked that they be put on as appraisers.

Mr. SHERIDAN. The record should not show that if it does, Congressman.

Mr. BALDWIN. Would the gentleman yield? Is it not true that one of the notes on one of these pieces that you just identified is a flat statement:

Make sure this man is on the list.

Mr. SHERIDAN. If he is qualified.

Mr. BALDWIN. There wasn't any such statement on your note, it just said:

Make sure this man is on the list—

period.

Mr. SHERIDAN. Would you care to read it, Congressman?

Mr. BALDWIN. Yes.

Mr. CONSTANDY. I will read it.

The letter is from—I am wondering if it is necessary, it makes no difference to me, but I wonder, since this applies equally to a large number of people, whether it is necessary to read the name of the person about whom the letter is being written.

Mr. BALDWIN. I am not referring to name, but wasn't there a note saying:

Make sure this man is on the list.

Mr. CONSTANDY. That is correct, Congressman. That note is written on the letterhead of the real estate firm, and it is addressed to an individual to whom this office is seeking assignment of work as an

appraiser. In a letter he gives indication of his qualifications. In this particular instance the letter came addressed to Mr. Michael Kelly. I will read it.

I have been associated with the (blank) real estate office for the last 5 years as an independent salesman of residential and commercial real estate. I have listed, sold, appraised, and arranged financing of such properties in the following areas: Roxbury, Jamaica Plain, Dorchester, Hyde Park, West Roxbury, Roslindale, Dedham, Milton, Needham, Westwood, Newton, Brookline, and Norwood. I have attended and participated in many conferences and seminars held by the Boston Real Estate Board during the last 5 years.

And there is thereafter listed his personal status, is married, with a baby, and so forth, the fact that he has been a lifelong resident of Boston, and has maintained a home at the address he gives.

I am eligible under the new real estate licensing law which came into effect January 1, 1959, to be licensed as a real estate broker and do business in the Commonwealth of Massachusetts.

He thereafter offers as a reference the name of the man on whose stationery his letter of qualifications appears.

So I think, Mr. Congressman, that we have a number of situations. I think in this particular instance the letter of qualifications was the instrument which initially began and asked that the individual be considered for assignment to be fee appraiser. And in this case the letter bore the notation, "Mike, make sure he is on the list," signed with Mr. Sheridan's initials. I think, too, that there are other situations where there was no such letter, where the names were submitted by various people, including Mr. Sheridan, without an accompanying letter of qualifications. Is that correct, Mr. Sheridan?

MR. SHERIDAN. Yes.

MR. CONSTANDY. On occasion did you receive a letter from the person in which they set forth the qualifications, is that correct?

MR. SHERIDAN. Yes.

MR. CONSTANDY. And sometimes you did not?

MR. SHERIDAN. I either got a letter or I received a telephone call. I did not transpose onto paper the telephone conversation. I forwarded the name to Mr. Dole for his approval.

MR. CONSTANDY. Mr. Dole has testified that on those occasions when the names were referred to him in the regular course of the conduct of his business he would send to the applicant a letter soliciting that person's references and qualifications to do appraisal work. There will be no question as we go through the hearing and later stages that there were people who were assigned fee appraisal work who were in fact not qualified. There will be people who have been assigned work who in fact had never appraised anything before. We have already had the testimony of Mr. Schwartz. And in his testimony he admitted that he had never made an appraisal before being assigned to work in the department of public works. I would like to be able, if possible, to keep these things in balance to the effect that those cases which were followed in the normal procedure within the department could be considered as one class of things. And if we can now direct the attention to the second class, where there were occasionally telephone calls which initiated the request of the assignment of the appraisal work, you testify now that you occasionally did receive telephone calls and forwarded the name of the individual to Mr. Dole.

We have that, together with Mr. Dole's testimony that he did send letters to these individuals. I think that there are occasions when either the letter sent back to Mr. Dole was nonexistent, or we have not been able to find it. So that there are situations where people were assigned work and we have been unable to find that there is in fact a letter listing their qualifications, but they nonetheless received work.

Mr. SHERIDAN, going back to the testimony of Mr. Dodge, in which he states—and in which you concurred, on at least one or two occasions you did request Mr. Dole's completed E-28 form showing the assignment of fee appraisers—would it not have been more appropriate to direct your attention and the interest that you had to Mr. Dole rather than to Mr. Dodge?

Mr. SHERIDAN. Would you explain the reason for that, the reason for the question?

Mr. CONSTANDY. Mr. Dodge, as he outlined his function in the department of public works, it was simply mechanical, he would receive from Mr. Dole the E-28 with the assignments contained thereon. It was thereafter his function to see that the letters fulfilling those assignments were made up for Commissioner Dole's signature. He performed no judgment, no discretion in the names which he used; he simply accommodated Mr. Dole's office in seeing that the letters carrying out his assignments were made up. If you had an interest in seeing that different people were assigned, I again state, would it not have been more appropriate to discuss that matter with Mr. Dole rather than Mr. Dodge?

Mr. SHERIDAN. Well, for the one or two times that it was discussed with Mr. Dole and Mr. Dodge instead of Mr. Dole, I don't see where it made any difference which way I did discuss it, because if there was a change made—and I am not saying there was—the change went back to Mr. Dole.

Mr. CONSTANDY. Well, it necessarily had to go back to him, because until he signed the letter making the assignment, it wouldn't have gone out.

Mr. SHERIDAN. Not necessarily. It went back to him before it went upstairs to Mr. Dodge.

Mr. CONSTANDY. You did talk to Mr. Dodge on occasions about assignments on E-28's?

Mr. SHERIDAN. On the layout.

Mr. CONSTANDY. There was nothing Mr. Dodge was able to do about anything you weren't pleased with, was there?

Mr. SHERIDAN. I was not interested in anything that Mr. Dodge was interested in. I wanted to see that our people were getting the same consideration as the people Mr. Dole was recommending.

Mr. CONSTANDY. Mr. Dodge has also testified that on occasion changes were made on these E-28's which you requested to see after they left Mr. Dole; is that true, or is it not true?

Mr. SHERIDAN. If it is so, they were then returned to Mr. Dole, and he knew of the change. Before they went back to Mr. Dodge.

Mr. CONSTANDY. It goes back and forth twice, actually, doesn't it?

Mr. SHERIDAN. Well, under the conditions that you are stating, yes.

Mr. CONSTANDY. Now, there came a time, did there not, when Mr. Dole would send his copy of the E-28 to the office on the fourth floor which was shared by you and Mr. Kelly, is that true?

Mr. SHERIDAN. Occasionally.

Mr. CONSTANDY. And what was the purpose for having that sent?

Mr. SHERIDAN. Patronage reasons.

Mr. CONSTANDY. Were you aware that Mr. Toumpouras had requested Mr. Dole to see that that E-28 was sent to the fourth floor?

Mr. SHERIDAN. I believe there was some conversation from which I gathered that Mr. Toumpouras would review it before he——

Mr. CONSTANDY. And were there times when Mr. Dole's E-28 was sent to the fourth floor that changes would be made thereon?

Mr. SHERIDAN. That I cannot say.

Mr. CONSTANDY. You do not know?

Mr. SHERIDAN. I do not know that.

Mr. CONSTANDY. Did you ever make a change on one of Mr. Dole's E-28's?

Mr. SHERIDAN. And notified him, yes.

Mr. CONSTANDY. We will get to the notification of him. Did you, first of all, did you ever make a change on one of Mr. Dole's E-28's that was sent to the fourth floor?

Mr. SHERIDAN. I feel that I made one or two changes, yes.

Mr. CONSTANDY. Why?

Mr. SHERIDAN. What are you talking about specifically?

Mr. CONSTANDY. Why did you make the change?

Mr. SHERIDAN. What case are you talking about specifically?

Mr. CONSTANDY. I give it back to you. On what case did you make a change?

Mr. SHERIDAN. To the best of my knowledge, I have no idea.

Mr. CONSTANDY. Well, in those cases where you did make a change, what is the purpose for it?

Mr. SHERIDAN. In which case are you talking about Mr. Constandy?

Mr. CONSTANDY. Mr. Sheridan, you testified now that on occasion when the E-28's were sent to Mr. Dole on the fourth floor you would make changes on the E-28. I would like to ask you why you made those changes.

Mr. SHERIDAN. A very specific reason; is that what you asked me?

Mr. CONSTANDY. What reason did you have?

Mr. SHERIDAN. On what case are you talking about, Mr. Constandy? I said, to the best of my recollection I made an occasional change.

Mr. CONSTANDY. I would like to know why.

Mr. SHERIDAN. I can't give you an answer to that question, just tell me what you are talking about.

Mr. CONSTANDY. It is fairly clear, Mr. Sheridan, that you had a reason to do the thing you did do. When an E-28 came from Mr. Dole's office to the fourth floor, you have testified that on occasion you would change the assignment that he had made, generally or specifically; whatever recollection you have, I would like to know why you made the change, what was the purpose in doing it?

Mr. SHERIDAN. I have stated that there is more than one case, to the best of my knowledge. I would like to know specifically which case you are asking me about.

Mr. CONSTANDY. I asked you, in any case.

Mr. SHERIDAN. I can't give you a reason unless I know the case.

Mr. BALDWIN. Mr. Chairman, I would like to ask that the witness be directed to answer the questions. He is evading the questions completely and obviously.

Mr. JOHNSON. The Chair would ask you to answer the questions a little more specifically. I believe you are evading the questions. We would like to have an answer on any case. Now, certainly you have some cases in mind. Now, let's have any case.

Mr. SHERIDAN. I don't have any case in mind, sir. The best reason I can give you is for a patronage reason.

Mr. CONSTANDY. Then that is the answer, is it not, Mr. Sheridan?

Mr. JOHNSON. That is the answer.

Mr. SHERIDAN. I have already testified to that, Mr. Constandy.

Mr. CONSTANDY. No; you testified before about that class of cases when Mr. Dodge procured the E-28 from you; we are now talking about the E-28's which were sent from Mr. Dole's office to your office, Mr. Dole's copy of the E-28, not through Mr. Dodge, but directed to Mr. Dole from the office of Mr. Sheridan.

Mr. SHERIDAN. They all went back through to Mr. Dole.

Mr. CONSTANDY. After you made the change, the E-28 then went back to Mr. Dole; is that correct?

Mr. SHERIDAN. That is correct, sir.

Mr. CONSTANDY. Did you ever make a change where you changed a place, a specific appraiser on a specific parcel—maybe I can clarify it.

Did you, at the time you made any change on the E-28's, attempt to place a particular person on assignment to a specific parcel?

Mr. SHERIDAN. No.

Mr. CONSTANDY. It was a matter of chance, then; is that correct? You would take someone off for the reasons that you disclosed and you would put someone on more to your own liking, but it was just a matter of chance where on the E-28 this man received additional work; is that correct?

Mr. SHERIDAN. I would say so.

Mr. CRAMER. It is obvious, though, that the effect of the change is that this new person would be assigned to the appraisal on the piece of property evidenced on the sheet that you had before you; it would have affected him, wouldn't it, and the E-28 form said what piece of property was involved, how much fee was involved, a certain name was on it, and you say you changed the name for patronage reasons, so that you had notice as to what property was involved when you made the change, didn't you, on the face of it?

Mr. SHERIDAN. Sure.

Mr. CONSTANDY. Can you tell us, Mr. Sheridan, what criterion you used to select the name of the man whom you would then put on the E-28 in place of the one you had taken off?

Mr. SHERIDAN. It goes back to the same word "patronage," the man that squawked the loudest.

Mr. CONSTANDY. Does any particular name come to your mind?

Mr. SHERIDAN. No.

Mr. CONSTANDY. I submit to you Mr. William Jacobs.

Mr. SHERIDAN. No.

Mr. CONSTANDY. Did you at any time place Mr. William Jacobs' name on an E-28 in place of someone else whose name was there?

Mr. SHERIDAN. To the best of my knowledge; no.

Mr. CONSTANDY. It might have happened?

Mr. SHERIDAN. To the best of my knowledge; no.

Mr. CONSTANDY. The answer doesn't eliminate the possibility, no?

Mr. SHERIDAN. You will have to refresh it.

Mr. CRAMER. Did you know Mr. Jacobs?

Mr. SHERIDAN. Yes, sir.

Mr. CRAMER. Did you know that he was doing work for the State, appraisals?

Mr. SHERIDAN. Yes.

Mr. CRAMER. As a matter of fact, didn't you recommend him as a free appraiser?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. Do you know who did?

Mr. SHERIDAN. No; he was hired under the regime of Christian Herter.

Mr. BALDWIN. Mr. Chairman, may I ask a question? Mr. Sheridan, as I understand the procedure on appointment of fee appraisers, they are separately appointed on each case, are they not?

Mr. SHERIDAN. That is right, sir.

Mr. BALDWIN. So then in each case that occurred during the time that you were in the office he was separately hired for that particular case, was he not?

Mr. SHERIDAN. As such, if that is the case; yes.

Mr. BALDWIN. Thank you.

Mr. CRAMER. Now, with regard to who employed Mr. Jacobs for the first time, it is true, however, that the records show that there was substantial work done by Mr. Jacobs in 1958 and 1959, principally, at which time he did \$23,650 in 1958, and \$27,650 in 1959, and \$13,760, which was the period, was it not, when you were in charge of personnel and patronage in the commissioner's office?

Mr. SHERIDAN. In the department of public works, yes.

Mr. CRAMER. And this is where he got the big jump in his work?

Mr. SHERIDAN. I question that, sir, for this reason. I am wondering when the cases were assigned. They may have been settled in 1958, 1959, and 1960. I question the time that he was assigned the cases.

Mr. CRAMER. You mean you wait a couple of years to pay fee appraisers for their work?

Mr. SHERIDAN. It may take some 2 years to put in his appraisal, or a year.

Mr. CRAMER. I am sure the record will be clarified on that particular point.

Mr. SHERIDAN. I just said I questioned it, sir, I didn't say that I was positive on it.

Mr. CONSTANDY. I believe, Mr. Cramer, the records do show that there is sometimes a considerable period between a person submitting his actual work and the time he received compensation for the work.

Mr. CRAMER. Well, it is also true, I believe, that the records which the committee has, showed that Ed Sheridan was one of the persons recommending Mr. Jacobs for appointment, isn't that correct?

Mr. SHERIDAN. If it does, it is not so.

Mr. MAY. According to the list maintained by Commissioner Dole, the sponsor of Mr. Jacobs is shown as Mr. Ed Sheridan. But you are correct, Mr. Sheridan, in that Mr. Jacobs was receiving fee appraisal work long before you ever came to the department.

Mr. SHERIDAN. That is right. Mr. Dole's record may show that, but that is not a true record.

Mr. MAY. We have to be careful because Mr. Dole's records which were made available to us are only Mr. Dole's most current records, he had prior sheets and prior lists and prior sponsors that are not now available.

Mr. CONSTANDY. Mr. Sheridan, did you at some times receive requests for appraisers or others on their behalf seeking to have the appraiser assigned to a given area?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. I am not talking about a particular layout now, I am talking about a particular area, whatever the town may be, if there is work in that town, where so-and-so gets some of the work.

Mr. SHERIDAN. I have many calls that way from many members of the legislature from many various sources, individuals interested. When they heard that there was something going they all wanted a piece, to go out and appraise, every one of them was interested.

Mr. CONSTANDY. When there is some activity in a given area they wanted to be recommended so that they could get some of the work in that area?

Mr. SHERIDAN. That is correct.

Mr. CONSTANDY. Did anyone ever request to be assigned to a specific parcel?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. Mr. Sheridan, I would like for you to look at this E-28 for Attleboro, layout 4777.

I call your attention to the column that reads "recommended appraisal" on the first page.

Mr. SHERIDAN. Which one?

Mr. CONSTANDY. The column that reads "recommended appraisal."

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. And I direct your attention further to the next column.

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. Do you recognize the handwriting?

Mr. SHERIDAN. Yes.

Mr. CONSTANDY. I believe you were present this morning when there was testimony relating to these three E-28's, were you not?

Mr. SHERIDAN. I was.

Mr. CONSTANDY. Did you hear it?

Mr. SHERIDAN. I did.

Mr. CONSTANDY. I believe at that time it was pointed out that one E-28 bearing Mr. Dole's name was sent to him, and that one E-28, the one you have in your hand—

Mr. SHERIDAN. May I interrupt you, Mr. Constandy, for 1 minute?

Mr. CONSTANDY. Go ahead.

Mr. SHERIDAN. May I have the other two copies to refer to?

Mr. CONSTANDY. You certainly may.

Mr. SHERIDAN. And also the appointment letters that Mr. Dole said were never sent?

Mr. CONSTANDY. Yes. I would appreciate it if you wouldn't get them mixed up, though.

Mr. SHERIDAN. I won't mix them up. Would you indulge us just a moment, please?

Mr. CONSTANDY. Mr. Sheridan, may I anticipate the point that may trouble you? Would you just go through the beginning until you reach that point that concerns you at the moment?

Mr. SHERIDAN. I didn't hear you, sir.

Mr. CONSTANDY. I said, if I may anticipate the point which I believe may be troubling you, perhaps we can go through the beginning of this and reach that point that does trouble you, right?

Mr. SHERIDAN. Go ahead.

Mr. CONSTANDY. The E-28 which bears the notation at the top "commissioner's copy," the one that you say that has the names Collins and Schwartz written in your handwriting.

Mr. SHERIDAN. That is right, sir.

Mr. CONSTANDY. From whom did you receive that E-28?

Mr. SHERIDAN. From whom did I receive it?

Mr. CONSTANDY. Yes.

Mr. SHERIDAN. This is the copy that you approve, or that a statement was made on this morning that was delivered to the commissioner's office.

Mr. CONSTANDY. Let me ask you if it was, and if it was, by whom?

Mr. SHERIDAN. To the best of my ability, by Mr. Dodge.

Mr. CONSTANDY. Were you aware at that time that the practice had then become that two E-28 forms would be made out, one of which would go to Commissioner Dole and one of which would be sent as marked to the commissioner's office, Mr. Kelly?

Mr. SHERIDAN. Yes.

Mr. CONSTANDY. At the time you sent in the names of Mr. Collins and Mr. Schwartz, were you aware that Mr. Dole had previously entered the names on his copy for the same parcels of Mr. Coyle and Mr. Fraser?

Mr. SHERIDAN. I was not.

Mr. CONSTANDY. You knew that he had them?

Mr. SHERIDAN. Sir?

Mr. CONSTANDY. I say, you knew that he had them?

Mr. SHERIDAN. I did, I supposed that he had them.

Mr. CONSTANDY. It came to be a custom, did it not?

Mr. SHERIDAN. I wouldn't say a custom, I supposed that he had a form E-28.

Mr. CONSTANDY. Would you suppose further that he would assign people to the parcels that were first on his E-28's?

Mr. SHERIDAN. It was his duty to, yes.

Mr. CONSTANDY. It was his duty to. And would it be reasonable to believe that he might not assign the same two people that you had assigned?

Mr. SHERIDAN. If he had assigned so, he had recommended so, yes.

Mr. CONSTANDY. We are getting a little bit away from "recommend." That is the document which will cause the letters of assignment to be sent out, "recommend," which you were talking about earlier, is the

memo which suggests that some work be given to a particular person?

Mr. SHERIDAN. This is a recommendation for appraisals on an E-28 form.

Mr. CONSTANDY. Recommendations to whom?

Mr. SHERIDAN. I don't know.

Mr. CONSTANDY. To whom were you making the recommendations?

Mr. SHERIDAN. On these here?

Mr. CONSTANDY. Yes.

Mr. SHERIDAN. To Mr. Dodge in the right-of-way division.

Mr. CONSTANDY. Mr. Dole has the authority and responsibility to make the assignments, you were making the recommendation to Mr. Dodge, is that correct?

Mr. SHERIDAN. Yes, sir, at this point, yes.

Mr. CONSTANDY. Is there some further point?

Mr. SHERIDAN. By all means.

Mr. CONSTANDY. Go on, if you will.

Mr. SHERIDAN. Mr. DiNatale yesterday testified, if you so remember, that there was a problem in the Attleboro area where bulldozers were laying against the houses of individual taxpayers, and that appraisers had not been assigned—am I right so far?

Mr. CONSTANDY. You may be right as to the testimony of Mr. DiNatale, you are not right as to the statement of fact at that time. If you will bear with me, I will explain why I say that. The letters that you have before you which assign certain parcels to Mr. Coyle and certain parcels to Mr. Fraser were in fact already typed up as a result of Mr. Dole's E-28 assignment. There appears on each of these letters the notation to change them respectively to Mr. Collins and Mr. Schwartz. So it is not true that it became necessary to have another E-28 assigning individuals when in fact, as a result of Mr. Dole's assignment, those letters were already in existence. As a matter of fact, those letters are only in our possession because they did not go out.

Mr. SHERIDAN. There was no reason. I do not know the reason why they did not go out. All I know, Mr. Constandy, is that when this matter came to the attention of the commissioner, there were—these appraisers are assigned on this E-28 recommended by me from a patronage file. This is the way they were sent to Mr. Dodge.

Mr. CONSTANDY. I call your attention, Mr. Sheridan, to a great deal of evidence that is before this committee to the effect that prior to the time when there was no assignment of anyone by anyone, and in the Damort land case, the conspiracy had already begun.

Mr. SHERIDAN. I am not familiar with that phase.

Mr. CONSTANDY. Well, I believe the committee is. And I believe that the testimony will bear out the fact that by November 4, the date on which the actual assignments were made, the conspiracy was well underway, by that date Mr. Webb has testified that he had received a telephone call from Mr. Harney to the effect:

How much do you want for your property?

Thirty thousand dollars.

What if I get you thirty-five?

OK.

I call your attention to the second telephone conversation which took place prior to this assignment from Mr. Harney to Mr. Webb,

and about which Mr. Webb has testified, in which Mr. Webb quotes Mr. Harney as saying:

I have managed to get \$42,500.

This is before the appraisals were even being made.

Mr. SHERIDAN. I don't know anything about this, Mr. Constandy. I was not here when he testified.

Mr. CONSTANDY. Mr. Sheridan, Mr. Dole had fulfilled his responsibility to the department of public works in executing his E-28—

Mr. CRAMER. Who pressured you into making this change? You said you were pressured into making the change.

Mr. SHERIDAN. I never said I was pressured into making any change, Mr. Congressman.

Mr. CRAMER. You said you were pressured into making some changes upon recommendation.

Mr. SHERIDAN. I never said so.

Mr. BALDWIN. Will the gentleman yield? You did mention that you put Mr. Schwartz and Mr. Collins on this E-28 because they were on the patronage list.

Mr. SHERIDAN. That is right.

Mr. BALDWIN. Why did it happen that they were on the top of the patronage list?

Mr. SHERIDAN. No reason more than that Olivera and Burns are on the bottom of the list.

Mr. BALDWIN. Why did you pick their two names off as compared to anybody else on the list?

Mr. SHERIDAN. The list was set out in the southeastern part of the State. I had no reason, I wouldn't know Schwartz and I wouldn't know Collins any more than I would know you, and I have seen you for the first time.

Mr. BALDWIN. There must have been some reason why you picked those two names out rather than some other names.

Mr. SHERIDAN. Geographically they come from those areas.

Mr. CONSTANDY. Does Mr. Coyle come from that area?

Mr. SHERIDAN. I believe so.

Mr. CONSTANDY. Does Mr. Fraser come from that area?

Mr. SHERIDAN. In the southern part, I believe so.

Mr. CONSTANDY. So, from a geographical standpoint there was no reason to change them?

Mr. SHERIDAN. I didn't change anything, I submitted this list as is.

Mr. CONSTANDY. Yes. The effect of it was to change Mr. Coyle and Mr. Fraser, who also came from that area.

Mr. SHERIDAN. No; I didn't change anything on that. I didn't change Mr. Coyle; I didn't change the young lady's, whichever one has been changed. I made this list out. I admit to making this E-28 list, Mr. Constandy. I have told you this 30 times, if I have told you once.

Mr. CONSTANDY. Right. And it followed that the assignments were made on the basis of your E-28 and not Mr. Dole's.

Mr. SHERIDAN. They were not; from your lips you told me they were not. You told me, "Would you be surprised, Mr. Sheridan, that there were names changed in your E-28?" Am I right?

Mr. CONSTANDY. This is the point that I told you that I believe troubled you, and we will get to it.

Mr. SHERIDAN. It doesn't trouble me a bit.

Mr. CONSTANDY. I don't propose to be argumentative with you, Mr. Sheridan. If you sit there and go through this thing in an orderly process, I will be very happy to afford you an opportunity to make whatever comment you choose to make pertaining to the balance of the assignments that you had made on the E-28's. But we are here concerned with the Damort land case particularly; we are here concerned with the conspiracy that began before that assignment of yours.

Mr. CRAMER. May I ask a question here?

You say you put Schwartz' and Collins' names on. Where did you get their names? Who recommended them? Who recommended them to you?

Mr. SHERIDAN. The patronage file that I had.

Mr. CRAMER. How did they get to your patronage file?

Mr. SHERIDAN. I had no knowledge of that, sir.

Mr. CRAMER. You don't know—somebody obviously suggested them.

Mr. SHERIDAN. Somewhere along the line somebody did.

Mr. CRAMER. You don't know who suggested them?

Mr. SHERIDAN. Not at this moment; no.

Mr. CRAMER. You don't know whether Mr. Harney suggested them to you, or suggested—

Mr. SHERIDAN. I can answer that. Mr. Harney did not recommend them.

Mr. CRAMER. Mr. O'Connell didn't recommend them?

Mr. SHERIDAN. No, sir.

Mr. CRAMER. You don't know who had recommended them?

Mr. SHERIDAN. At this point, no; but I can answer those two questions "No."

Mr. CRAMER. Do you have records that would indicate who recommended them, your patronage file?

Mr. SHERIDAN. They were destroyed when the new commissioner—the patronage records that Commissioner DiNatale left when Commissioner Ricciardi took over.

Mr. CRAMER. They were destroyed, is that right? They were destroyed?

Mr. SHERIDAN. It could be, then; I don't know if he had any use to keep them.

Mr. CRAMER. You kept no files yourself?

Mr. SHERIDAN. No, I have no longer anything to do with patronage.

Mr. CRAMER. Well, if in fact they exist, Mr. DiNatale has them so far as you know—they took them?

Mr. SHERIDAN. To the best of my knowledge they were delivered to him.

Mr. CONSTANDY. Mr. Sheridan, according to your testimony you made your assignments to Mr. Collins and Mr. Schwartz independent of any knowledge that Mr. Dole had made other assignments of other people for the same parcels; is that correct?

Mr. SHERIDAN. That is correct, sir.

Mr. CONSTANDY. And is it then a coincidence that you assigned eight parcels to these two people, and Mr. Dole had assigned arbitrarily eight parcels to two different people? Is that a chance thing?

Mr. SHERIDAN. No, it is just one of those things: one of those things that happened.

Mr. CONSTANDY. To get to the matter that I know is troubling you, I believe if you look on page 3 of your E-28 form you find certain assignments. If you look on page 3 of Mr. Dole's E-28 form, and the office copy, you will find that other assignments made by you were not in fact fulfilled. Is that correct?

Mr. SHERIDAN. Yes.

Mr. CONSTANDY. And is that the point that causes you some concern?

Mr. SHERIDAN. That is the point.

Mr. CONSTANDY. We want to be very clear on the record. The eight parcels that we are initially talking about, we have your testimony on. The records disclose further that on certain other parcels in that layout, where you had a different name than Mr. Dole's, your name did not prevail; is that correct?

Mr. SHERIDAN. From all appearances, yes.

Mr. CONSTANDY. You don't know what significance to attach to it?

Mr. SHERIDAN. I don't know; I don't know what significance to attach to it. That is not my responsibility. I recommended when they told me to come up with the names to go up and get this work done, and I put these names down, and I submitted them as recommended, and later what happened to them, Mr. Constandy, I have no idea.

Mr. CRAMER. Who are "they"? They recommended—who?

Mr. SHERIDAN. I don't follow you.

Mr. CRAMER. Read his answer back.

(The reporter read from his notes as requested.)

Mr. SHERIDAN. This goes back to the conversation of yesterday, the commissioner, when I say "they," the commissioner had ordered that this work be out in a hurry, be in the works and out of the building, and when I say "they" that is who I mean.

Mr. BALDWIN. Would the gentleman yield? Mr. Sheridan, the testimony yesterday about Mr. Dole was that he had been requested at some prior time to forward his form 28 to your office as a matter of routine for you to check. And he testified yesterday that these had been up in your office for weeks, and that the reason that the bulldozers were nudging the buildings was because they had been up in your office for weeks, and he hadn't been able to get them back.

If I understand that testimony correctly, there was no great rush all of a sudden, you had had them for weeks in your office.

Mr. SHERIDAN. To my knowledge, I had not had them. When I received them, or when I knew about them, I believe—I am not positive, I can't say this—I don't believe that Mr. Dole was in the building, I am not sure, I can't pin a date on it, I didn't check to see if he was away at this time when this matter happened. But this all happened as the commissioner so testified yesterday when he was pressed by the Providence Journal, I think it was, I am not sure of the two newspapers, in regard to the troubles that were going on in the Attleboro section where there was a bulldozer laying against the property and no appraisal had yet been made by an outside appraiser.

Mr. CRAMER. That still doesn't explain why you selected these two, however.

Mr. SHERIDAN. Patronage came out of a folder.

Mr. CONSTANDY. Mr. Sheridan, is it a coincidence that Mr. Dole's records do reflect that it was you that recommended Mr. Collins to him as a fee appraiser?

Mr. SHERIDAN. Is it a coincidence?

Mr. CONSTANDY. Did you recommend Mr. Collins to Mr. Dole?

Mr. SHERIDAN. I recommended him, as I told you, you showed me a list of some I submitted to you. It could very well be that I recommended or submitted his name to Mr. Dole.

Mr. CONSTANDY. Mr. Dole's records reflect you did.

Mr. SHERIDAN. That could very well be. As you understand, gentlemen, I have never met Mr. Collins or I have never met Mr. Schwartz.

Mr. CONSTANDY. Yes. Mr. Sheridan, did anyone ever suggest to you that Mr. Collins or Mr. Schwartz be assigned to those eight parcels?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. After you had made up your E-28 what did you do with it?

Mr. SHERIDAN. As I told you, I sent it to Mr. Dodge immediately.

Mr. CONSTANDY. That is what troubles me—

Mr. SHERIDAN. It did not go through Mr. Dole, because, as I said to you a minute ago, I am almost positive, but not quite, I believe Mr. Dole was out of the building that week.

Mr. CONSTANDY. Did you have a conversation with Commissioner DiNatale at which time he directed you to see that these things were done?

Mr. SHERIDAN. He had the conversation with Mr. Toumpouras.

Mr. CONSTANDY. And did Mr. Toumpouras subsequently have a conversation with you?

Mr. SHERIDAN. Yes; in regard to getting these appraisals out.

Mr. CONSTANDY. Did he solicit your assistance?

Mr. SHERIDAN. Yes, he did.

Mr. CONSTANDY. I beg your pardon?

Mr. SHERIDAN. Yes, he did.

Mr. CONSTANDY. Mr. Sheridan, have you ever met Mr. C. H. Lawton, Jr.?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. Do you recollect when you first heard his name?

Mr. SHERIDAN. I believe it was either—I don't know if it was a member of the FBI or it was a member of your committee, your investigation, but not until the investigation, I don't know at what phase of it.

Mr. CONSTANDY. Did you direct Mr. Dodge to assign Mr. Lawton to the Damort property?

Mr. SHERIDAN. I did not.

Mr. CONSTANDY. Do you know who did?

Mr. SHERIDAN. I do not.

Mr. CONSTANDY. Did you know Mr. Frank Harney?

Mr. SHERIDAN. I do know Mr. Frank Harney.

Mr. CONSTANDY. For how long have you known him?

Mr. SHERIDAN. I went to school with Mr. Frank Harney.

Mr. CONSTANDY. College?

Mr. SHERIDAN. High school.

Mr. CONSTANDY. Grade school?

Mr. SHERIDAN. No; he lived in the vicinity—he lived in one section of the city and I lived in the other.

Mr. CONSTANDY. Do you know how Mr. Harney became employed with the department of public works?

Mr. SHERIDAN. Mr. Harney was recommended to me, and I hired him.

Mr. CONSTANDY. Did Mr. Harney ever discuss with you the Damort land property?

Mr. SHERIDAN. He did not, sir.

Mr. CONSTANDY. Mr. Dodge has testified that on occasion you would ask from him the review board figure and the appraisal figures on particular cases, is that true?

Mr. SHERIDAN. It is not true—one phase of it is true.

Mr. CONSTANDY. Will you clarify that, please?

Mr. SHERIDAN. For the first time today, since I have been in the department, I now find that the review board figure was not available to us. To the best of my knowledge, this has not been true.

Mr. CONSTANDY. I am not sure I understand you. Was it your belief until today that the review board figure was available?

Mr. SHERIDAN. The review board figure was available to anybody.

Mr. CONSTANDY. In other words, the practice of disclosing was so commonplace until today—

Mr. SHERIDAN. No; the review figure was available to anybody that was interested in finding out about it.

Mr. CONSTANDY. By anybody, who do you mean?

Mr. SHERIDAN. In the department.

Mr. CONSTANDY. Was there not a place to which a person in the department would go to find out what it was?

Mr. SHERIDAN. Only one place, Mr. Dole's office.

Mr. CONSTANDY. Was there not some such book or ledger in which that figure was entered?

Mr. SHERIDAN. There was not; to my knowledge.

Mr. CONSTANDY. Did you at any time request Mr. Dodge to secure that figure for you?

Mr. SHERIDAN. Many times I asked Mr. Dole and Mr. Dodge, from phone calls that I received, from legislators, senators, attorneys, and what-have-you, for that figure.

Mr. CONSTANDY. Did you ever request the appraisal figures?

Mr. SHERIDAN. I requested appraisal figures once, and was informed by Mr. Dole that they were confidential, he would not give them to me. I then walked away and never again asked the question.

Mr. CONSTANDY. Would it follow that you have never seen a fee appraisal made on behalf of the department of public works?

Mr. SHERIDAN. That is right.

Mr. CONSTANDY. You have never seen one in your life?

Mr. SHERIDAN. I have never seen one—you say have I ever seen one made?

Mr. CONSTANDY. No; have you ever seen one of the department's appraisals?

Mr. SHERIDAN. No; I haven't—I have seen the folder.

Mr. CONSTANDY. You have never opened the folder and looked inside?

Mr. SHERIDAN. I wouldn't know what to look for.

Mr. CONSTANDY. Why would you have the interest to inquire about the review board figure?

Mr. SHERIDAN. I have just explained to you, sir, from many legislators, senators, people in public life——

Mr. CONSTANDY. Let me interrupt and maybe clarify the question. This is not a casual interest on the part of the person that asks you, is it? Would it be the attorney for the property owner?

Mr. SHERIDAN. I just said it was legislators and senators; the constituents would chase them and jump on them and yell about it, "When am I going to get my money, where is it, where does it lie, when is the case, when is it going to be settled"—these were the kind of questions I received every day.

Mr. CONSTANDY. Did anyone ever make the comment to you that they felt that the amount that the State had offered for the property was too low?

Mr. SHERIDAN. It could be. I don't think everybody was happy with it.

Mr. CONSTANDY. We are trying to figure out if there was anyone that wasn't to the point that they expressed it to you.

Mr. SHERIDAN. I said there could have been, I can't put my finger on it.

Mr. CONSTANDY. Without looking for a specific case, were there on occasion people that you can now recall that stated to you that they were not satisfied with the figures that the State had offered for their property?

Mr. SHERIDAN. As I say to you, again, there could have been one, I could not specifically name you one.

Mr. CONSTANDY. Had you ever had occasion to mention to either Mr. Dodge or Mr. Dole that you had heard such a thing from a property owner or someone who represented him or was interested in it?

Mr. SHERIDAN. I believe on one matter—and I don't even know if there was a review board appraisal, I think it was a \$2,500 case.

Mr. CONSTANDY. With whom did you discuss that?

Mr. SHERIDAN. Mr. Dole.

Mr. CONSTANDY. And what did you discuss with him?

Mr. SHERIDAN. That the individual was interested in settling, and what was the figure that the department had set up on it.

Mr. CONSTANDY. That is not really what I am asking. What I am concerned with is whether anyone ever told you that they weren't satisfied with the offer that had been made to them by the department, and you thereafter conveyed that information to Mr. Dole and Mr. Dodge.

Mr. SHERIDAN. No; I said there may have been, but I have no specific case that I can say that they told me that the figure was too small, and that I then went back and told Dodge——

Mr. CONSTANDY. Did you ever make a suggestion to either Mr. Dodge or Mr. Dole that there be an additional appraisal made on any property taken by the State?

Mr. SHERIDAN. No, sir.

Mr. CRAMER. What property was this you were inquiring about that you just testified to a minute ago where you asked Dole what the value was, what the appraisal was, what they could pay, what they would pay?

MR. SHERIDAN. I told you that the case was in the vicinity of \$2,500, Mr. Cramer.

MR. CONSTANDY. Mr. Sheridan, had you ever recommended that the fee of any fee appraiser be increased?

MR. SHERIDAN. No, sir.

MR. CONSTANDY. Mr. Ellis has testified——

MR. CRAMER. Just a minute. What authority did you have in your position to make inquiries of that sort or to effect settlements of any kind? What authority did you have to make such inquiry on behalf of anybody else?

MR. SHERIDAN. I had no authority, I was just getting information for someone else, sir.

MR. CRAMER. That is the point.

MR. CONSTANDY. Mr. Sheridan, Mr. Ellis has testified that there came a time when it was suggested by you that Mr. Carlton Colburn and Mr. Harvey Hamilton be transferred from the Worcester division office; is that true?

MR. SHERIDAN. As I have told you before——

MR. CONSTANDY. Mr. Sheridan, I know you have told me, but that wasn't on the record.

MR. CRAMER. You haven't told us.

MR. SHERIDAN. I am sorry.

MR. CRAMER. We are the ones that are supposed to be listening to the evidence, I thought, not counsel.

MR. SHERIDAN. I am sorry, sir. To the best of my knowledge, Mr. Colburn and Mr. Hamilton were transferred as the result of a reorganization. As I have so stated before, I have no other knowledge of why they were transferred. Any transfer in any division is usually handled by the head of the section, and it is handled where the workload is. It is not uncommon to move one body from Middleboro, Mass., which is at the tip of the cape, to the central part of the State.

MR. CONSTANDY. I recognize that is not uncommon, but that is not what we are asking about. If I understand your statement, it was not uncommon within a particular division of the department of public works that the division head would for his own accommodation transfer people. That would be the division head, not you?

MR. SHERIDAN. I have no right to transfer.

MR. CONSTANDY. You don't transfer people, do you?

MR. SHERIDAN. No.

MR. CONSTANDY. Do you deny that you had the conversation with Mr. Ellis in which you suggested to him that these two people be transferred?

MR. SHERIDAN. I have no recollection of it. Mr. Ellis, if I remember right, assumed that I had a conversation.

MR. CONSTANDY. Oh, no; Mr. Ellis testified quite directly that he had that conversation with you; and I would like to ask you further whether you had ever had a conversation with Mr. Colburn relative to his transfer from Worcester?

MR. SHERIDAN. Whether I did?

MR. CONSTANDY. Yes.

MR. SHERIDAN. Yes; I did.

MR. CONSTANDY. Would you tell us when? Was it after the transfer?

Mr. SHERIDAN. I believe it was some time after the transfer.

Mr. CONSTANDY. Did Mr. Colburn come to see you?

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. Did he come to ask you why he had been transferred?

Mr. SHERIDAN. Yes, sir.

Mr. CONSTANDY. What did you tell him?

Mr. SHERIDAN. To the best of my knowledge, I didn't know why.

Mr. CONSTANDY. Mr. Ellis has testified that you transferred Mr. Colburn. Did you?

Mr. SHERIDAN. No; I did not.

Mr. CONSTANDY. Did you request Mr. Ellis to transfer Mr. Colburn and Mr. Hamilton?

Mr. SHERIDAN. I did not request Mr. Ellis to transfer Mr. Colburn and Mr. Hamilton.

Mr. CONSTANDY. Did you have any conversation with Mr. Ellis about the transfer of either Mr. Colburn or Mr. Hamilton prior to the time that they were transferred?

Mr. SHERIDAN. To the best of my knowledge, no.

Mr. CONSTANDY. Did you on May 27, 1958, have a meeting with Mr. Colburn relative to his transfer?

Mr. JOHNSON. Mr. Counsel, I wish you would allow the witness to answer the questions. If the witness wants to seek advice from his counsel he may do so. We are having enough trouble as it is getting the answers.

Mr. SHERIDAN. Would you repeat that, Mr. Constandy?

Mr. CONSTANDY. Yes. I asked if on May 27, 1958, that being a time after Mr. Colburn and Mr. Hamilton were transferred, you had a conversation with Mr. Colburn about his transfer.

Mr. SHERIDAN. I think I just testified to the fact that I don't know the exact date, but I just testified to the fact that I did.

Mr. CONSTANDY. Did you on that occasion ask Mr. Colburn to walk away from the Worcester project?

Mr. SHERIDAN. I did not.

Mr. CONSTANDY. Did you tell Mr. Colburn that those orders were given to you by someone outside the department?

Mr. SHERIDAN. I did not.

Mr. CONSTANDY. There came a time, Mr. Sheridan, when Mr. Jacobs was no longer in favor in the department of public works, and it was suggested by DiNatale that he no longer receive work. Mr. Dole has told us that he thereafter took Mr. Jacobs from the list of approved fee appraisers, and it was not his intention thereafter to give Jacobs any additional work. And Mr. Dole was told that you came to him and stated that the boss wanted Jacobs put back on the list. Is that true?

Mr. SHERIDAN. It is not true.

Mr. CONSTANDY. Did you ever have a discussion with Mr. Dole relative to Mr. Jacobs being assigned work?

Mr. SHERIDAN. No, sir.

Mr. CONSTANDY. Then or any other time?

Mr. SHERIDAN. Then or any other time.

Mr. MAY. I have just one point, Mr. Chairman.

Mr. Sheridan, with respect to the assignments in Attleboro, your position is that you assigned the appraisers Schwartz and Collins to eight parcels, and it is your position that it is just a coincidence that you happened to assign 8 parcels, not 5, not 11. Are there eight parcels, Mr. Sheridan?

Mr. SHERIDAN. That is right.

Mr. MAY. Not 5, not 6, not 11 not 3, 8, and it is just a coincidence that Mr. Dole, when he was making out his list, assigned to the first 2 appraisers 8 parcels—you claim that is just a coincidence?

Mr. SHERIDAN. It also seems to show here that Olivera and Burns, that I assigned eight parcels at the same time for the same layout, so there was no——

Mr. MAY. Did you assign, in making your assignments to each two appraisers, eight parcels?

Mr. SHERIDAN. I am sorry; I was looking at the wrong sheet. I recommended, excuse me.

Mr. MAY. You recommended eight parcels to each two appraisers: is that right?

Mr. SHERIDAN. That is right.

Mr. MAY. Throughout all your assignments, everybody got eight parcels?

Mr. SHERIDAN. I have counted the first two, I have not counted the others. It does not run the same way.

Mr. MAY. It does not. That is all.

Mr. JOHNSON. Any further questions?

Mr. BALDWIN. I have a question, Mr. Chairman.

Mr. JOHNSON. Congressman Baldwin.

Mr. BALDWIN. Mr. Sheridan, I would just like to state that I am certainly distressed with the testimony that you have given, particularly when I think that we have allotted about \$2 billion of Federal Interstate Highway funds to the States for each year. The general gist of your testimony is that so far as Massachusetts is concerned, and the Massachusetts Department of Public Works, the highway program is run just about like a ward political office, and I am most distressed by such testimony.

Mr. SHERIDAN. That is not true, sir.

Mr. BALDWIN. That is the way it sounded to me.

Mr. SHERIDAN. I am sorry; I did not express myself well.

Mr. CRAMER. Mr. Chairman, due to the lateness of the hour—I have some questions that I was considering addressing to the witness. Is he going to be called again at some future date?

Mr. JOHNSON. No, sir.

Mr. CRAMER. Mr. Chairman, I request that he be kept under subpoena until further evidence and consideration can be given in executive session as to whether or not to recall him. I don't have an opportunity to interrogate this late in the evening, and from what testimony he has given there are probably other matters that we want to interrogate him about. I think in executive session we can decide whether or not to release the witness.

Mr. JOHNSON. Mr. Sheridan, you will consider yourself still under subpoena and subject to the call of the Chair.

Mr. SHERIDAN. Thank you, sir.

Mr. JOHNSON. You may now be excused.

Mr. SHERIDAN. Thank you, gentlemen.

Mr. JOHNSON. The next witness will be Mr. Michael F. Kelly.

Will you raise your right hand?

Do you solemnly swear that the testimony you will give before this committee will be the truth, and nothing but the truth, so help you God?

Mr. KELLY. I do.

TESTIMONY OF MICHAEL F. KELLY, ACCOMPANIED BY FRANCIS X. McLAUGHLIN

Mr. JOHNSON. Do you wish to have counsel represent you?

Mr. KELLY. Yes; I would like to have him along.

Mr. JOHNSON. Would you identify your counsel?

Mr. KELLY. Francis X. McLaughlin, 1411 K Street, Washington, D.C.

Mr. MAY. We are running somewhat late, Mr. Kelly; I will try to be as brief as possible. Where do you reside?

Mr. KELLY. 11 Ashworth Road, Quincy, Mass.

Mr. MAY. How are you now employed?

Mr. KELLY. I am employed with an engineering firm, Howard, Needles, Tammen & Bergendorf.

Mr. MAY. They are consultant engineers?

Mr. KELLY. Yes, sir.

Mr. MAY. And where is their place of business located?

Mr. KELLY. 80 Boylston Street, Boston.

Mr. MAY. What sort of work do you do for that firm?

Mr. KELLY. They have had a project in Boston in connection with the Government center, and I have been going around contacting the public utilities, the city, the State, and things along that line there.

Mr. MAY. What did you do prior to becoming employed for the consulting firm?

Mr. KELLY. I worked with the department of public works.

Mr. MAY. When did you become employed by the department of public works?

Mr. KELLY. September 16, 1957.

Mr. MAY. In what capacity?

Mr. KELLY. The first job I had down there was an analyst. I can't think of the name offhand right now. I was probably working in that category for a year or a year and a half, and then there was a vacancy as an administrative assistant, and I took that job there then.

Mr. MAY. Administrative assistant to the commissioner?

Mr. KELLY. To the commissioner; yes.

Mr. MAY. As a matter of fact, when you had the prior title of analyst, or whatever it was, your functions remained the same?

Mr. KELLY. Yes; they remained the same.

Mr. MAY. Now, the commissioner testified yesterday; he explained your duties as somewhat of a buffer, he said, between the commissioner and the public, or complainants.

Mr. KELLY. Well, you see, in Massachusetts if a citizen has anything to do with the public works department, they always want to start off with the commissioner. And my job was to, when they came and asked for the commissioner, to invite them in my office, to sit down

and talk to them, and if it was a problem that could be referred to maintenance or traffic or something along that line I would do it, either that or call someone from that division downstairs.

Mr. MAY. You would handle appointments with complainants and that type of function?

Mr. KELLY. Yes.

Mr. MAY. In your capacity, in your operation, you had no responsibility in or interest in the right-of-way division of the department: is that true?

Mr. KELLY. Yes, sir.

Mr. MAY. With respect to fees paid to fee appraisers, did you occasionally receive complaints from certain fee appraisers or people on their behalf that their fee was too low, and they should get an increase?

Mr. KELLY. Yes; I have.

Mr. MAY. And what did you do on those occasions?

Mr. KELLY. Well, I received enough complaints, but I think I only mentioned it to Mr. Dole once or twice, and I just mentioned it to him that this fellow, whoever he was there, complained, and when he came in to see him I told him I had mentioned it to Commissioner Dole.

Mr. MAY. Was William Jacobs one of those fee appraisers who complained that his fees were too low on occasions?

Mr. KELLY. I don't think so.

Mr. MAY. You don't ever recall William Jacobs talking to you about an increase in his fees?

Mr. KELLY. I don't believe so.

Mr. MAY. Did you occasionally receive complaints or requests seeking information on particular land takings? Did you get calls from people who were interested in particular land takings?

Mr. KELLY. What people do you mean?

Mr. MAY. Anybody, property owners, attorneys. Would they call you?

Mr. KELLY. In what regard?

Mr. MAY. Seeking information about a particular property—is it going to be taken, or what?

Mr. KELLY. You would get inquiries along the line, there would be some story in the newspaper with a certain new rule or something along that line, and certain people would come in.

Mr. MAY. Did you ever get any calls from anybody seeking this type of information, "When is my property going to be taken, how much am I going to get for it, what is the status now?" Did you get that sort of inquiries?

Mr. KELLY. Yes, they ask you questions along that line there, and briefly, you might say, "It doesn't look as though that road will be started for a year or 2 years," or whatever the time was. They make inquiries of how the State would pay them, and I would tell them that the department would make one appraisal and the outside appraisers—there would be two of them, and it would go before a review board, and then it was up to them to either accept their figure, or they had the right of suing the State.

Mr. MAY. Did you ever ask Commissioner Dole what the fee appraiser figures were on any property?

Mr. KELLY. I think I did once.

Mr. MAY. Why?

Mr. KELLY. Some representative called, and he said that one of his constituents had an offer of a certain figure, and would I find out whether that was the review board figure, because they didn't know whether to accept it or not. So I went to Mr. Dole and I asked Mr. Dole, I said, whoever the representative it was that called, "These people have been offered a certain figure; is that the figure?"

And he checked, and he said, "Yes."

So I called the representative back and I told him that that was the review board figure, and the people would have to make up their mind either to accept it or, you know, file suit.

Mr. MAY. This only happened once?

Mr. KELLY. No, I think it happened more than that. I said this one case that I can recall.

Mr. MAY. But this type of request happened more than once?

Mr. KELLY. Oh, yes.

Mr. MAY. This type of request on your part that Commissioner Dole went to the review board happened more than once?

Mr. KELLY. Yes.

Mr. MAY. And you would give out the review board figure to these people?

Mr. KELLY. I always checked it this way here, I would ask the individual, the representative or senator, whoever it was, what were the people offered. And I think on every occasion, in fact I am positive on every occasion, that it was the review board figure.

Mr. MAY. Mr. Sheridan testified that up until today he had no reason to believe that the review figure was confidential. Were you under the same impression?

Mr. KELLY. No, I am not. Mr. Dole happened to mention it to me one time.

Mr. MAY. That it was confidential?

Mr. KELLY. Yes. But once I thought that the figure that people were offered, a certain figure, and that was the review board, you are more or less explaining, giving them a little advice.

Mr. MAY. You are suggesting that if you received the review board figure and realized that the parties had been offered less than that that you wouldn't then give out the review board figure?

Mr. KELLY. No.

Mr. MAY. Did that happen?

Mr. KELLY. No. I think every time it happened it was all the top figure.

Mr. MAY. Were there times when upon receiving the figure or data about the appraisal reports that you were convinced that the figure was sort of low for that particular property?

Mr. KELLY. What figure?

Mr. MAY. Did you ever mention to Commissioner Dole or to Herb Dodge that you thought the figure that the State was going to offer on that particular property was kind of low, it seemed low to you?

Mr. KELLY. No, I don't think so.

Mr. MAY. Did you receive requests from individuals seeking fee appraisal work?

Mr. KELLY. Yes, sir.

Mr. MAY. And from others acting on behalf of the people who wanted fee appraisal work?

Mr. KELLY. Yes, sir.

Mr. MAY. What did you do?

Mr. KELLY. Well, on some occasions the one who recommended them would bring them along, I would talk to him, and then if Commissioner Dole wasn't busy I might ask him to see him. If he was busy, I would submit his name on a regular form that we have.

Mr. MAY. At that point you would not be concerned with the qualifications of the individual?

Mr. KELLY. You would talk generally on it. If a fellow told me that he was, well, say a truckdriver there, I certainly wouldn't recommend him, if he said that that was—that is what he did during all his working career.

Mr. MAY. Suppose he said he was in the real estate business, would you recommend him?

Mr. KELLY. I would send that form to Mr. Dole, yes.

Mr. MAY. Would you consider anybody who said he was in the real estate business qualified to make appraisals; is that right?

Mr. KELLY. I never checked, myself, personally, I always would listen to their story, and if I thought that they had been in the real estate business, on their word, of course, I would send their name along.

Mr. MAY. You would consider that Commissioner Dole was supposed to judge their qualifications?

Mr. KELLY. Any time I ever sent a letter to Mr. Dole he would send a copy of this form letter, or whatever you might call it, information-seeking letter, and in it would be enough questions, I thought, that a person would explain their background and qualifications.

Mr. CRAMER. What qualifications do you have for judging qualifications? How are you qualified to judge?

Mr. KELLY. I didn't judge them, sir.

Mr. CRAMER. You sent the name on, you had to decide whether you thought the name should be sent on, what qualifications did you have to make that decision?

Mr. KELLY. I didn't claim to have any qualifications.

Mr. CRAMER. You decided whether to send the name on, didn't you?

Mr. KELLY. Well, if a fellow told me that he had been in the real estate business as a salesman and appraiser or his own business, and that he had done appraising work, I did recommend him to Mr. Dole.

Mr. CRAMER. You had no appraisal background yourself?

Mr. KELLY. No, sir.

Mr. CRAMER. And you had nobody under you who did have appraisal work making recommendations to you, did you, as to whether this fellow was qualified, whoever it was?

Mr. KELLY. No, I always left it up to Mr. Dole.

Mr. CRAMER. On the basis of your own judgment?

Mr. KELLY. Yes.

Mr. CRAMER. And if a man had a real estate business with no appraisal background you would recommend him, too?

Mr. KELLY. No, sir. I think that they would tell me that in their real estate business or work that they did selling, appraisal, and so forth and so on.

Mr. CRAMER. Whether he was in business 3 months or 6 months or a year or 5 years in real estate, he just had to have a real estate license?

Mr. KELLY. No, sir; if anyone had told me that he had done some real estate selling for 3 months, I doubt if I would recommend him, I doubt if I did recommend him.

Mr. CRAMER. Mr. Kelly, did any fee appraiser ever ask you to help him become assigned to a particular piece of property?

Mr. KELLY. No, sir.

Mr. CRAMER. Mr. Kelly, I have here a piece of correspondence dated July 8, 1958; it is an interoffice correspondence from Associate Commissioner Dole, attention right-of-way engineers. And it reads—

Please assign an appraiser for parcel 26 and R-1, Nicholas and Mary Papalous, to John J. McGrath, 31 State Street, Boston.

And the name of John J. McGrath is stricken out, it is the second time today something is stricken out, and under that is written "John Cronin, Mr. Kelly." How would something like that come about?

Mr. KELLY. Occasionally when Commissioner Dole wasn't in the office or was out in the field, and so forth and so on—I don't know exactly what that one there is, but generally it was that some appraiser refused an assignment or something along that line, and Mr. Ellis wanted to get it on the roll. On several occasions he did call me and asked me to give a name.

Mr. SCHWENGEL. Mr. Chairman, this man took an oath to tell the truth, the whole truth, and so forth. I wonder if counsel would advise this man and all these people what jeopardy they are in if they don't tell the truth.

Mr. MAY. I am certain that you are represented by counsel, I am certain your counsel has pointed it out to you, Mr. Kelly, has he not, you are under oath?

Mr. KELLY. Yes.

Mr. CRAMER. What authority do you have to make such changes as this?

Mr. KELLY. Well, Mr. Ellis called me, and I made the recommendation.

Mr. CRAMER. How do you know who George Cronin is, the guy you suggested do the work, George Cronin?

Mr. KELLY. Well, George is a fellow that I know from around town—I don't mean it exactly that way.

Mr. CRAMER. It just slipped out.

Mr. SCHWENGEL. Mr. Chairman, I would like to point out that it is obvious right here that this man is not telling the truth.

Mr. CRAMER. Let me finish. Let's get into George Cronin, the fellow you knew around the streets. Did he apply to you for a job as fee appraiser?

Mr. KELLY. I don't think so, I think he had been on Mr. Dole's list for quite a long time, or he had been doing work for the State for some time.

Mr. CRAMER. Where did his name come from, then? How did you pick his name out, George Cronin, your friend from around the streets?

Mr. KELLY. We did have a list.

Mr. CRAMER. And there were a lot of names on it, wasn't there?

Mr. KELLY. Yes.

Mr. CRAMER. How did you pick out George Cronin?

Mr. KELLY. I don't know.

Mr. CRAMER. He was a friend of yours, wasn't he?

Mr. KELLY. Not a friend; I knew him.

Mr. CRAMER. You knew him around the streets?

Mr. MAY. Well, actually, Mr. Kelly, George Cronin wasn't in fact assigned to that property, that property was assigned eventually to Mr. Jacobs and Mr. Edward DeSimone. But we have another piece of correspondence here that says Ann McDevitt—who is she?

Mr. KELLY. She is the girl that used to be at the information desk; I think she was a secretary.

Mr. MAY. This mentions a particular property, and it says:

Ann McDevitt will add to F. P. Dole's list and to M. Kelly's list—

indicating that you did have a list.

Mr. KELLY. Yes.

Mr. MAY. We have had considerable testimony about the E-28 after a certain time being forwarded to the desk shared by you and Mr. Sheridan; is that true. There came a time when routinely these E-28 forms were submitted?

Mr. KELLY. Yes, that copy was sent down to my desk; yes.

Mr. MAY. What would you do after the E-28 got there?

Mr. KELLY. Just the same as I told you before: I just put it on the desk with some other papers that I have, and I don't recall ever doing anything with it.

Mr. MAY. Maybe that would account for some of the delays that had happened. Commissioner Dole has explained that, when this list was submitted from him to your office, he awaited the return of the forms so that he could send it to the right-of-way division, and have appraisal assignment letters sent out. So when you just left it on your desk and did nothing about it, it caused a delay in the program. Were you aware of that?

Mr. KELLY. Mr. May, I don't think—I listened to the testimony this morning, and I don't believe Mr. Dole said he gave it to me.

Mr. MAY. Mr. Dole said that there came a time when, after he had been spoken to by Mr. Toumpouras, he, after making out the original assignments of fee appraisers, submitted the list to you people, you people being outside in the commissioner's office.

Mr. KELLY. No, he never submitted it to me.

Mr. MAY. Who got it?

Mr. KELLY. I think Mr. Constandy explained that situation this morning.

Mr. MAY. So you didn't make changes in Commissioner Dole's original assignments?

Mr. KELLY. I don't believe I did.

Mr. MAY. Did you ever?

Mr. KELLY. Yes, once that I am positive of.

Mr. MAY. It may be more than once?

Mr. KELLY. Once that I am positive of.

Mr. MAY. Perhaps others?

Mr. SCHWENGEL. Which one?

Mr. KELLY. This one concerned a Mrs. Alphen.

Mr. SCHWENGEL. Who is she?

Mr. KELLY. She is the wife of an outside appraiser, you know, a fee appraiser, who had died, and she was sent down to me from the state house to look for some fee appraisal work. And I submitted the name to Commissioner Dole.

Mr. SCHWENGEL. Did she have any experience, any qualifications?

Mr. KELLY. Well, I did talk to her, and she did——

Mr. MAY. As a matter of fact she did, Congressman, she used to help her husband while he was alive, he was a fee appraiser and got a considerable amount of work, and she helped him while he was living in his work and I guess she herself had been in the real estate business.

Mr. KELLY. I can't say exactly, but I would say generally that is what she told me. This was a couple of years ago, I think.

Mr. MAY. Were there other times when you made changes in the list, Mr. Kelly?

Mr. KELLY. I don't believe so.

Mr. MAY. It might have happened?

Mr. KELLY. Yes, it might have happened, yes.

Mr. MAY. Mr. Kelly, the mystery still exists. Who assigned Mr. Lawton to the Damort property? We have been able to trace the letter that Mr. Lawton received back to the department through Mr. George Toumpouras now to Mr. Herbert Dodge, and Mr. Dodge testified that he received a telephone call from somebody on the fourth floor suggesting that Mr. Lawton be given that assignment. Mr. Kelly, did you?

Mr. KELLY. No, sir.

Mr. MAY. Do you know Mr. Lawton at all?

Mr. KELLY. To the best of my recollection, unless you people during your questioning have asked me that, during the past year, the first I have heard of Mr. Lawton is when his name was brought up in the newspapers.

Mr. MAY. So you didn't know Mr. Lawton. Did you know Mr. Harney?

Mr. KELLY. No.

Mr. MAY. Did you know Mr. Harney in January of 1960?

Mr. KELLY. No.

Mr. MAY. I have no further questions.

Mr. JOHNSON. Any questions?

Mr. CRAMER. Just one or two brief questions.

Mr. JOHNSON. Mr. Cramer.

Mr. CRAMER. Do I understand that before you were employed as the "some kind of senior analyst" in the commissioner's office, that your prior experience was as a substitute clerk in the post office, and assistant secretary in the Governor's office, is that right?

Mr. KELLY. That was two, yes.

Mr. CRAMER. Pardon?

Mr. KELLY. That was two of my jobs, yes.

Mr. CRAMER. What Governor was that?

Mr. KELLY. Governor Furcolo.

Mr. CRAMER. What did you do as assistant secretary?

Mr. KELLY. Well, I was in charge of the work in the reception area.

Mr. CRAMER. How many letters did you type, how much dictation did you take?

Mr. KELLY. None, sir.

Mr. CRAMER. Can you type?

Mr. KELLY. No sir.

Mr. CRAMER. And what work did you do?

Mr. KELLY. Sir, up in Massachusetts in the Governor's office there is a chief secretary and there are assistant secretaries. Up in the Governor's office the assistant secretary isn't what you might call a stenographer, a girl.

Mr. CRAMER. I know. But they answered mail, didn't they, and answered telephones, and that sort of thing, typed up letters?

Mr. KELLY. The girls in the office did, sir.

Mr. CRAMER. What was your job as assistant secretary?

Mr. KELLY. I was in charge of the reception area.

Mr. CRAMER. Reception area?

Mr. KELLY. Well, the reception room, the outer office of the Governor's office or suite, whatever you call it.

Mr. CRAMER. You were the receptionist, in other words?

Mr. KELLY. More or less, yes.

Mr. CRAMER. And what kind of salary did you get then?

Mr. KELLY. I think it was around \$3,800 or \$3,900, \$4,000, around there.

Mr. CRAMER. And how long were you in that job?

Mr. KELLY. Well, from the early part of January when Governor Furcolo took office until September 16 of the same year.

Mr. CRAMER. And then you went—where did you go?

Mr. KELLY. Down in the department of public works.

Mr. CRAMER. And then under whose direction were you there, who employed you there? Whose office were you in there?

Mr. KELLY. Commissioner DiNatale's office.

Mr. CRAMER. You went there with Commissioner DiNatale?

Mr. KELLY. Yes, sir.

Mr. CRAMER. And your classification there was some kind of a senior analyst?

Mr. KELLY. Yes, that is exactly what the title was.

Mr. CRAMER. And what did you analyze? A senior analyst, how many junior analysts did you have under you?

Mr. KELLY. That part I don't know, sir.

Mr. CRAMER. What did you analyze as a senior analyst?

Mr. KELLY. I didn't, sir. That was just a title.

Mr. CRAMER. It was just a title. And what did you do?

Mr. KELLY. Well, I was the first person that you saw in the commissioner's office, people came there with problems or looking for help, and things along that line there.

Mr. CRAMER. You analyzed their problems, is that it?

Mr. KELLY. Yes, sir.

Mr. SCHWENGEL. Did you analyze their political background, too, maybe?

Mr. KELLY. Not too much, sir. If the person had a problem, I would try to help them.

Mr. CRAMER. Some of those problems obviously were people seeking jobs, right?

Mr. KELLY. That was some of it, yes.

Mr. CRAMER. How about seeking contracts with the State?

Mr. KELLY. Well, I think all the contracts in the State were put out for bid.

Mr. CRAMER. Did anybody come to you to discuss those?

Mr. KELLY. No, sir.

Mr. CRAMER. They wanted to discuss it with somebody in Mr. DiNatale's office?

Mr. KELLY. No, sir.

Mr. CRAMER. And then your designation was changed to an administrative assistant. Now, how did your duties change?

Mr. KELLY. The duties remained the same.

Mr. CRAMER. Did the salary?

Mr. KELLY. No, the salary moved up.

Mr. CRAMER. What was your salary as senior analyst?

Mr. KELLY. I started at \$6,300, in around there.

Mr. CRAMER. Did you jump from \$3,800 in the Governor's office as assistant secretary to \$6,300 in DiNatale's office as some kind of a senior analyst, is that right?

Mr. KELLY. Yes, sir.

Mr. CRAMER. And what was—what was your pay as administrative assistant? You said it went up.

Mr. KELLY. I think it was a little over \$8,000, when I started. But then there were a couple of general pay increases given to the State employees.

Mr. CRAMER. And what did you end up with as a salary?

Mr. KELLY. It was close to nine.

Mr. CRAMER. \$9,000. What did you earn as a post office substitute clerk?

Mr. KELLY. Up to around \$4,500, I think.

Mr. CRAMER. What did you do as administrative assistant to the commissioner?

Mr. KELLY. Just the same as I did before as senior analyst.

Mr. CRAMER. Did anybody in that position talk to you about contracts with the State?

Mr. KELLY. No, sir.

Mr. CRAMER. People talked to you, didn't they, about work—getting work, jobs, and so forth?

Mr. KELLY. Yes.

Mr. CRAMER. Now, your present—do I understand that you have no engineering degree?

Mr. KELLY. That is right, sir.

Mr. CRAMER. Have you any training in the engineering field?

Mr. KELLY. No, sir.

Mr. CRAMER. And who employs you now?

Mr. KELLY. Howard, Needles, Tammen & Bergendoff.

Mr. CRAMER. And what kind of work are you doing with them?

Mr. KELLY. I go around to the different utility companies, the city, and to the departmental building construction in the State seeking information regarding the demolition and the subsurface work of the new government center.

Mr. CRAMER. That is in the department of public works, is that right?

Mr. KELLY. No.

Mr. CRAMER. You visit the department of public works on similar matters?

Mr. KELLY. I don't think so, sir. I visit—I have dropped in to the building down on Nashua Street since I have left, yes, but just social.

Mr. CRAMER. You didn't go there to discuss work?

Mr. KELLY. No, sir.

Mr. CRAMER. Contracts or what-have-you?

Mr. KELLY. No, sir.

Mr. CRAMER. What is your salary now?

Mr. KELLY. \$8,000.

Mr. CRAMER. That is all.

Mr. JOHNSON. Mr. Kelly, you testified here that you never had changed any of the E-28's in your position as administrative assistant to the commissioner?

Mr. KELLY. To the best of my recollection—well, I admitted to one, I am positively sure of.

Mr. JOHNSON. Then who did? Did Mr. Sheridan have that responsibility in the office?

Mr. KELLY. No, sir; not that I know of.

Mr. JOHNSON. To your knowledge Mr. Sheridan never did?

Mr. KELLY. To my knowledge, no.

Mr. JOHNSON. Did you ever see him change any?

Mr. KELLY. No, sir.

Mr. JOHNSON. Are there any further questions?

Mr. CRAMER. Just one question, Mr. Chairman.

Does the Needles firm with whom you work do work for the department of public works?

Mr. KELLY. They had one job a few years back.

Mr. CRAMER. What was that?

Mr. KELLY. I don't know. It was some engineering job on some road in the western part of the State.

Mr. CRAMER. Do you know what kind of work it was, engineering, drafting?

Mr. KELLY. Some type of roadbuilding.

Mr. CRAMER. Where was the road, if you recall, what highway was involved?

Mr. KELLY. I wouldn't know, sir, somewhere, I believe, in the western part of the State.

Mr. CRAMER. Consulting or construction?

Mr. KELLY. Consulting.

Mr. CRAMER. That is all.

Mr. JOHNSON. Are there any further questions?

(No response.)

Mr. JOHNSON. The witness may be excused.

The next witness is Mr. George C. Toumpouras. Will you raise your right hand? Do you solemnly swear that the testimony you give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TOUMPOURAS. I do, sir.

TESTIMONY OF GEORGE C. TOUMPOURAS, ACCOMPANIED BY
HENRY F. O'CONNELL, JR., COUNSEL

Mr. JOHNSON. You may be seated.

Do you care to be represented by counsel?

Would you identify counsel?

Mr. O'CONNELL. My name is Henry F. O'Connell, Jr., member of the bar, 50 State Street, Boston, Mass.

Mr. CONSTANDY. Would you state your name and occupation, please?

Mr. TOUMPOURAS. My name is George C. Toumpouras.

Mr. CONSTANDY. Will you spell that, please?

Mr. TOUMPOURAS. T-o-u-m-p-o-u-r-a-s. I am associate commissioner of the department of public works.

Mr. CONSTANDY. Mr. Toumpouras, when did you begin to work with the department of public works?

Mr. TOUMPOURAS. I started my occupation with the department of public works in September of 1957.

Mr. CONSTANDY. And at some time thereafter did you receive an appointment within the department of public works?

Mr. TOUMPOURAS. Yes, sir. On April 30, 1959, I was appointed as associate commissioner of the department of public works.

Mr. CONSTANDY. Now, we have had some testimony as to how the different functions within the department of public works are handled. Would you explain to the committee what responsibilities you had with the department of public works?

Mr. TOUMPOURAS. My responsibilities are the division of waterways, the division of outdoor advertising, State cars and assignments, safety, public hearings which are shared jointly by all commissioners, and various aspects that come in the line of duty as assigned.

Mr. CONSTANDY. Since you have become employed by the department of public works, have you had any responsibilities or official connection with the right-of-way department?

Mr. TOUMPOURAS. Only at the direction of Commissioner DiNatale, I believe it was either once or twice that that happened.

Mr. CONSTANDY. Even though you were not concerned and had no responsibility before the right-of-way division, did you sometimes receive complaints from people who directed them to you for one reason or another that did concern the right-of-way division?

Mr. TOUMPOURAS. Yes, sir; that happened on occasions, as a commissioner they would drop in and discuss their problems, and I would refer them either to Mr. Dole or Mr. Dodge of the right-of-way section.

Mr. CONSTANDY. On occasion, would you discuss those things with these people yourself?

Mr. TOUMPOURAS. Not on any occasions. It could have happened once or twice if people came in and they were aggrieved as to their problem. I have called Mr. Dodge in and referred the case to Mr. Dodge, or referred them to Commissioner Dole.

Mr. CONSTANDY. Have you on occasion asked either Mr. Dole or Mr. Dodge to tell you the review board figure on a particular case?

Mr. TOUMPOURAS. No, sir. At the time that—on one occasion or maybe twice there was an aggrieved party in my office, whereupon he

asked the question that he was not—he presented the question that he was not satisfied with his figure. I presume that was the offer that was made by the department, and I called Mr. Dodge down at that time——

MR. CONSTANDY. To your office?

MR. TOUMPOURAS. To my office, sir—and I referred the case to him, and said he ought to review the matter with the gentleman.

MR. CONSTANDY. Did you make any suggestion to him that perhaps the offer was too low?

MR. TOUMPOURAS. No, sir, I never make any suggestions as to any offer of that sort, sir.

MR. CONSTANDY. Did you on that occasion or any other make a suggestion to either Mr. Dole or Mr. Dodge that they obtain another appraisal for the property?

MR. TOUMPOURAS. No, sir, to my recollection the only time I have ever had any reference to those matters was in a grievance that I referred to Mr. Dodge for a review.

MR. CONSTANDY. Did you sometimes suggest that they take another look at that case?

MR. TOUMPOURAS. I have, yes. I have said, take another look at it and review it, sir.

MR. CONSTANDY. You realize that in the position you held as an associate commissioner such a suggestion from Mr. Dodge, at least, would be interpreted by him as being directed by a superior?

MR. TOUMPOURAS. I did not consider it in that vein, sir. I never have inferred that. I never wanted Mr. Dodge or any of the employees to infer that I was ordering him to do anything. I merely referred it for reference and review and the best adjudication they could reach.

MR. CONSTANDY. Looking at it in retrospect, don't you think it possible that that interpretation could have been put on it by Mr. Dodge?

MR. TOUMPOURAS. I don't believe so. I didn't intend it so. I never inferred so. I didn't want Mr. Dodge to carry that impression at any time.

MR. CONSTANDY. Did you direct Mr. Dodge to report back to you on any of those cases which you did send to him as to what his finding would be?

MR. TOUMPOURAS. No, sir, once I referred the case to Mr. Dodge I more or less stayed out of that field. It was not my field. I had enough to do at the time.

MR. CONSTANDY. Did you from time to time receive requests from people that either they themselves or that someone else be assigned work as a fee appraiser?

MR. TOUMPOURAS. That happened before I became a commissioner, that there were requests made, and sometimes afterward, and as described earlier, I would send in a name requesting the commissioner to consider a party for his appraisal list.

MR. CONSTANDY. How would you receive those requests?

MR. TOUMPOURAS. Well, it could either have been by correspondence which was sent to the commissioner's office, it could have been by telephone calls from legislators, or from various members of the legislature or the executive branch.

MR. CONSTANDY. If a useless person applied for a job as an appraiser, would you suggest they try him?

Mr. TOUMPOURAS. No.

Mr. CONSTANDY. You simply conveyed the name of these individuals to him?

Mr. TOUMPOURAS. I suggested his consideration for whatever name I sent there for him to review and analyze, and if he saw fit consider him for the list.

Mr. CONSTANDY. There came a time, did there not, about the spring of 1959, shortly after you became an associate commissioner, when you requested Mr. Dole that he submit his E-28's containing the assignments of fee appraisers to you?

Mr. TOUMPOURAS. Yes, sir, that is so. That was at the direction of Commissioner DiNatale, whereupon Commissioner DiNatale instructed that Commissioner Dole be told to allow me to review the E-28 forms. At that time he had been receiving complaints of individuals that were on the list of Mr. Dole's not being considered. So I conveyed that message to Mr. Dole.

Mr. CONSTANDY. Mr. DiNatale was receiving complaints from people who knew themselves that the names were on the list were not getting work, is that correct?

Mr. TOUMPOURAS. That is correct, sir.

Mr. CONSTANDY. And Commissioner DiNatale directed you to ask Mr. Dole to submit his E-28 forms to you in order that you might see whether or not some of these people were in fact getting work, is that correct?

Mr. TOUMPOURAS. That is correct. And that only lasted a short while, sir.

Mr. CONSTANDY. Did you get each list as Mr. Dole would make it up?

Mr. TOUMPOURAS. I got some lists, sir, I don't recall, or I couldn't answer that question whether I got them all. Mr. Dole did refer some lists to me for review.

Mr. CONSTANDY. You got the list. What would you do with it?

Mr. TOUMPOURAS. Well, I would review them, sir, and if there was any opportunity to make a recommendation, I did make one or two recommendations on the list.

Mr. CONSTANDY. And what would the recommendation be, what form would it take?

Mr. TOUMPOURAS. Merely as a name, sir.

Mr. CONSTANDY. Did there not come a time when you yourself put a name on the E-28 list?

Mr. TOUMPOURAS. I might have. I don't recall whether I did, but I might have inserted a name and recommended it, returned it to Mr. Dole for his scrutiny and finalization.

Mr. CONSTANDY. While you had the E-28 did you keep it to yourself or did you show it to anyone else?

Mr. TOUMPOURAS. In most respects I kept it to myself. There were occasions where I asked for any recommendations for patronage if there were any.

Mr. CONSTANDY. And to whom would you direct that request?

Mr. TOUMPOURAS. Well, that would be to the patronage man.

Mr. CONSTANDY. Can you name him?

Mr. TOUMPOURAS. Mr. Sheridan.

Mr. CONSTANDY. Do you know whether Mr. Sheridan thereafter changed any of the names on the E-28's, of those lists that were coming to you now from Mr. Dole?

Mr. TOUMPOURAS. I don't recall any definite names, sir. I would say that if I did, when I got the list back I returned them back to Mr. Dole. I didn't scrutinize the lists at all.

Mr. CONSTANDY. There came a time, did there not, when a second list was made up, or a second E-28, one would go to Mr. Dole and the other one would come to the fourth floor, is that correct?

Mr. TOUMPOURAS. Yes, sir.

Mr. CONSTANDY. Now, after that began did you continue to receive the list from Mr. Dole?

Mr. TOUMPOURAS. Well, as I said, I got a few lists—this procedure did not last very long.

Mr. CONSTANDY. Was it replaced by this next practice of having two E-28's, one to go to Mr. Dole and one come directly to the fourth floor, to Mr. Sheridan or Mr. Kelly?

Mr. TOUMPOURAS. I couldn't exactly pinpoint the time on that. There was a time when Mr. Dole sent forth his E-28 list, it lasted for a short period of time, and then they stopped. Why he stopped I never inquired, because, again, I said that was his field, and I didn't want to get involved too deeply, because I had other duties to do.

Mr. CRAMER. He sent to you the E-28 list of the E-28 form with the names on it as to who should be appraisers?

Mr. TOUMPOURAS. E-28 form.

Mr. CRAMER. The form itself?

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. Well, how could you decide whether to send it to Sheridan to have him check it, how could you decide that something was wrong, if somebody who should have been given work had not been given work, just by simply getting these lists, how did you process them?

Mr. TOUMPOURAS. I didn't process them, I simply recommended them, I turned them back to Mr. Dole for his processing and recommendation.

Mr. CRAMER. Recommendation for what?

Mr. TOUMPOURAS. A name.

Mr. CRAMER. In other words, you recommended to Mr. Dole a name to be put on the E-28 form?

Mr. TOUMPOURAS. I recommended that this name be considered.

Mr. CRAMER. As a fee appraiser?

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. Did you write the name in?

Mr. TOUMPOURAS. I might have on one or two occasions, I don't recall, sir.

Mr. CRAMER. You wrote it in and submitted the name proposing him as a fee appraiser?

Mr. TOUMPOURAS. I made some recommendations to Mr. Dole.

Mr. CRAMER. Where did these names come from?

Mr. TOUMPOURAS. They came off these lists of appraisers who were sent in to Mr. Dole for consideration. He had the fee appraisers list, I believe he had that in his office.

Mr. CRAMER. If one came in, how did you decide the specific name to pick for a specific piece of property off this list? Did you call Mr. Sheridan? How did you make a decision.

Mr. TOUMPOURAS. Well, there was no definite decision to be made.

Mr. CRAMER. You had to decide a name. How did you decide that.

Mr. TOUMPOURAS. Yes sir, I did. In the event that there was a name that was prevalent, that there was a call on a man, I so inserted it.

Mr. CRAMER. And if somebody called and complained that somebody on the list hadn't gotten work, you would put his name on that, suggested him for the E-28, that he be put on that to get a fee appraisers' job?

Mr. TOUMPOURAS. I recommended him for that, yes.

Mr. CRAMER. Regardless of what the qualifications were?

Mr. TOUMPOURAS. I never established the qualifications, the qualifications were established by Commissioner Dole, to the best of my knowledge, he had a query, when a name was sent in for his consideration from me or from the other staff, he would send out a questionnaire and establish the individual's qualifications.

Mr. CRAMER. Now, when Dole sent those forms up did they have names on them?

Mr. TOUMPOURAS. Would you repeat that question?

Mr. CRAMER. When an E-28 form was sent to you did it have the name on it?

Mr. TOUMPOURAS. Yes, in some cases it did.

Mr. CRAMER. And then that would necessitate your changing the name in order to get somebody off the list, right?

Mr. TOUMPOURAS. I would make a recommendation, sir.

Mr. CRAMER. And how often did this happen?

Mr. TOUMPOURAS. Infrequently, in fact I don't recall whether it happened more than one or two times.

Mr. CRAMER. It certainly didn't do much good for you to protest it, did it, if you only made one or two changes?

Mr. TOUMPOURAS. I say, this request was made by the commissioner in this direction, and it was something that didn't last any length of time—

Mr. CRAMER. I am not talking about the changes you made personally, I am talking about the different names that you recommended back to Dole.

Mr. TOUMPOURAS. I didn't quite get your question.

Mr. SCHWENGEL. May I ask a question?

Mr. JOHNSON. Mr. Schwengel.

Mr. SCHWENGEL. Mr. Toumpouras, you are assistant commissioner. Who appointed you to that position?

Mr. TOUMPOURAS. I am an associate commissioner now, sir.

Mr. SCHWENGEL. Associate commissioner?

Mr. TOUMPOURAS. Yes.

Mr. SCHWENGEL. Who appointed you to that position?

Mr. TOUMPOURAS. Governor Furcolo.

Mr. SCHWENGEL. And so you are responsible to the Governor?

Mr. TOUMPOURAS. I am appointed by the Governor and approved by the Governor's council.

Mr. SCHWENGEL. You are not approved by the senate or by the house?

Mr. TOUMPOURAS. No, sir. In Massachusetts the gubernatorial appointments are approved by the Governor's council.

Mr. SCHWENGEL. And you are appointed to serve the public interest?

Mr. TOUMPOURAS. I am, sir.

Mr. SCHWENGEL. And you have heard a lot of the testimony, and you know what has been going on in this investigation. In your opinion do you think the public interest has been served in every instance by those who have appeared for the committee and by others with whom you have been associated?

Mr. TOUMPOURAS. Sir, I can't judge that, for the simple reason that in the testimony that was given here today that I heard, I am not too well aware of the right-of-way section, I never had any close dealings with the right-of-way section, I only was—if I may say so, this was cast upon me on two or three separate occasions.

Mr. SCHWENGEL. And as an associate commissioner you could have had an influence on correcting the irregularities, had you known about them?

Mr. TOUMPOURAS. Sir, the associate commissioner, Mr. Dole, who was in complete charge of the right-of-way section, had full control over the right-of-way section, I had no control over the section, sir.

Mr. SCHWENGEL. Who designates him for that position on the commission?

Mr. TOUMPOURAS. Well, to the best of my knowledge, sir, Commissioner Dole—now, this was not factual as far as I can see, but to the best of my knowledge—he assumed the right-of-way section upon his appointment back in 1953, and he so continued in that capacity with all the commissioners.

Mr. SCHWENGEL. Somebody had to appoint him to that, didn't he?

Mr. TOUMPOURAS. The commissioner designated him.

Mr. SCHWENGEL. And you as an associate commissioner had no voice in naming him?

Mr. TOUMPOURAS. My duties were not in the right-of-way section.

Mr. SCHWENGEL. But as a commissioner you could have had an influence, you had a right to speak out on this question?

Mr. TOUMPOURAS. To the best of my knowledge, I had no knowledge of the intricacies of the right-of-way section, no, sir.

Mr. SCHWENGEL. Let me ask this. Have you read the law of your State that outlines the duties of a commissioner?

Mr. TOUMPOURAS. Yes, sir.

Mr. SCHWENGEL. Doesn't it indicate that you have responsibilities to the public first?

Mr. TOUMPOURAS. Yes, sir; we have responsibilities.

Mr. SCHWENGEL. And as an associate commissioner you have a right to speak to the commissioner anytime about anything that goes on in any phase of the highway building program in the State of Massachusetts, isn't that right?

Mr. TOUMPOURAS. There is no limitation to that; no, sir.

Mr. SCHWENGEL. So you have a right, you could have had an influence?

Mr. TOUMPOURAS. Influence in what respect, sir?

Mr. SCHWENGEL. In correcting some of the irregularities that are being brought to light here in this hearing.

Mr. TOUMPOURAS. If I knew of that. I knew of no irregularities to my knowledge, there were no irregularities brought to me, because I was not familiar with the intricacies of the right-of-way section.

Mr. SCHWENGEL. It is mighty funny to me that when you read the newspaper reports—and you have had some good reporters—on some of the things that have been happening there in Massachusetts, and you have been unaware of what has been happening.

Mr. TOUMPOURAS. Sir, may I answer you? To my knowledge, since this investigation started, there have been various improvements, regulations, and so forth, in conjunction with the Federal Bureau of Roads. Prior to that I have no knowledge of that, sir.

Mr. BALDWIN. Would the gentleman yield? Mr. Toumpouras, you yourself have brought out one irregularity in the testimony, and that is that prior to the time you served as assistant or associate commissioner, the department headed by Mr. Dole didn't have to go outside their department relative to the handling of these forms, and you have brought out the fact that even though you had no responsibilities and no duties whatsoever in the field, that nevertheless you requested that these forms be submitted to you, and you have testified that at times you have written in somebody else's name. That is an irregularity in itself.

Mr. TOUMPOURAS. No, sir—if I may, sir—I said that I was ordered by Commissioner DiNatale to view the E-28 forms and to make recommendations. I returned these E-28 forms to Commissioner Dole for his scrutiny and his finalization.

Mr. CRAMER. And with the recommendation as to who the fee appraiser should be?

Mr. TOUMPOURAS. Only in a few instances, and limited at that, sir.

Mr. CRAMER. Were your recommendations ever refused by Dole?

Mr. TOUMPOURAS. Not to my knowledge. He never called it to my attention. Apparently these people were qualified that were on his list, and they accepted it as such.

Mr. CRAMER. Now, before you were appointed by the Governor's council to become associate commissioner, had you had any experience in the department of public works activities outside of being assistant to Commissioner DiNatale?

Mr. TOUMPOURAS. At the time I went down to the department, or prior to my going to the department?

Mr. CRAMER. Did you have any experience in the department other than assistant to Mr. DiNatale?

Mr. TOUMPOURAS. My State service starts in 1946, sir.

Mr. CRAMER. I am asking you, in the department, did you have any experience?

Mr. TOUMPOURAS. Since 1957 I did various research work for the commissioner.

Mr. CRAMER. Did you have any duties other than being assistant to the commissioner? Were you employed in any other capacity?

Mr. TOUMPOURAS. Yes. I did research work on outdoor advertising, which later I assumed the duties of at the time the then Commissioner Fritz was ill, I did research work on that, I did research on safety, I did research—I have sat on the safety council representing

the commissioner and representing the department. I handled correspondence when correspondence was referred to me. I reviewed various aspects assigned to me by the commissioner at that time.

Mr. CRAMER. So for about a year—from September 12, 1957, to April 30, 1959, is that the extent of your experience, right?

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. So that is about a year and 7 months?

Mr. TOUMPOURAS. As an assistant.

Mr. CRAMER. A year and 7 months as an assistant to Mr. DiNatale?

Mr. TOUMPOURAS. That is correct.

Mr. CRAMER. Now, prior to that time, prior to your coming to the department, what experience did you have?

Mr. TOUMPOURAS. I was with the department of correction; I was a social worker, investigator, with the department of correction.

Mr. CRAMER. That has no relationship to anything that the department of public works does, does it?

Mr. TOUMPOURAS. Well, it has a relationship as to dealing with human beings and analyses, and so forth.

Mr. CRAMER. You have to deal with human beings by living, I realize that. But did it have anything to do with the department of public works functions?

Mr. TOUMPOURAS. Administratively, from being in the State agencies and participating in the State functions; yes, sir.

Mr. CRAMER. But you were just a State social worker and investigator?

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. How much were you paid?

Mr. TOUMPOURAS. I was a grade 12. I believe that probably in the vicinity of \$5,000 or \$5,200; I don't remember.

Mr. CRAMER. What did you get as assistant to Commissioner DiNatale, which position you held for about a year and 7 months?

Mr. TOUMPOURAS. Grade 17, sir.

Mr. CRAMER. How much were you paid there?

Mr. TOUMPOURAS. I believe it started at \$6,300.

Mr. CRAMER. And what were you paid when you left?

Mr. TOUMPOURAS. When I became associate commissioner?

Mr. CRAMER. Yes.

Mr. TOUMPOURAS. \$10,000.

Mr. CRAMER. So you went from \$5,000 to \$10,000 in a period of a year and 7 months; right?

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. Are you an engineer?

Mr. TOUMPOURAS. No, sir; I am not.

Mr. CRAMER. You say you have a law degree?

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. And you have no other experience other than 1 year and 7 months in matters under the jurisdiction of the department of public works?

Mr. TOUMPOURAS. That is correct.

Mr. CRAMER. And yet you think you are qualified to be an associate commissioner, second in charge for all the public works projects, the whole department operation in the State of Massachusetts? That is a position to which you have been appointed; and you think you are qualified for that job?

Mr. TOUMPOURAS. I think I am qualified, and I think to the best of my ability I have tried to do a good job on it, sir.

Mr. CRAMER. Who recommended you for appointment as associate commissioner?

Mr. TOUMPOURAS. I believe Commissioner DiNatale did.

Mr. CRAMER. Based upon your experience of 1 year and 7 months in the department of public works you were promoted to assistant commissioner, second in charge of all the work in the department of public works, with no previous experience except a \$5,000-a-year job as a social worker and investigator. And I think this is a perfect example of why we have so many problems in the Highway Department of Massachusetts and in many other States. People are appointed to those positions with almost complete disregard in many instances for their background, their experience, or their capabilities, relating to highway construction, and in Massachusetts they have an even greater responsibility—they are in charge of all public works. And for me, this is hard to understand. This is the political patronage machine that has now been unmasked by these hearings, and the political patronage machine results in the breakdown of serving the people.

The breakdown comes from people not being qualified getting the top jobs—a \$5,000-a-year social worker promoted to a \$10,000-a-year job in a period of 1 year and 7 months, and I don't wonder that we have problems with our highway and other public works projects. I just don't understand it.

Mr. SCHWENGEL. He has had some experience in corrections, but he hadn't gotten around to doing any work in correcting the mistakes in this program.

Mr. JOHNSON. Any further questions, Mr. Constandy.

Mr. CONSTANDY. Commissioner Toumpouras, do you have any responsibility for highway construction in the department of public works?

Mr. TOUMPOURAS. No, sir; I don't. The chief engineer handles that.

Mr. CONSTANDY. Did there come a time—

Mr. CRAMER. What do you have jurisdiction over?

Mr. TOUMPOURAS. I handle the outdoor advertising; I handle the waterwork section, administrative; I handle the State cars operation.

Mr. CRAMER. Have you any experience in that?

Mr. TOUMPOURAS. I think I have.

Mr. CRAMER. Before being appointed associate commissioner?

Mr. TOUMPOURAS. I have had some experience.

Mr. CRAMER. I am talking about being in charge of a car pool, have you had any experience in that before.

Mr. TOUMPOURAS. Yes, I have had some experience.

Mr. CRAMER. What?

Mr. TOUMPOURAS. I had some experience in the service.

Mr. CRAMER. In what?

Mr. TOUMPOURAS. Motor pools.

Mr. CRAMER. What else is the responsibility of the department?

Mr. TOUMPOURAS. Not in automotive, sir.

Mr. CRAMER. What else is the general responsibility?

Mr. TOUMPOURAS. The general responsibility as to the public hearings.

Mr. CRAMER. What do you do in public hearings?

Mr. TOUMPOURAS. We moderate these hearings.

Mr. CRAMER. We—you do?

Mr. TOUMPOURAS. We take turns, each commissioner—sometimes we go, three of us, when we are available, and if three are not available, one of the commissioners will take one of the hearings, because at numerous times there are hearings throughout the State, more than one hearing, so we sort of divide the work.

Mr. CRAMER. And what else do you do as associate commissioner, what else do you have jurisdiction over?

Mr. TOUMPOURAS. I have outdoor advertising, on which I sit 1 day a week. It is part of a board composed of one member of the public works department and one of the commissioners, who, it has been established, sits as commissioner on the outdoor advertising, and two members appointed by the Governor, one a Republican and one a Democrat, who sit on this board, which controls the outdoor advertising sign industry for licensing.

Mr. CRAMER. Who has jurisdiction over waterworks, for instance.

Mr. TOUMPOURAS. I have supervision over waterworks.

Mr. CRAMER. That is right. Now, what experience did you have in waterworks before you were appointed a commissioner? That is a big field.

Mr. TOUMPOURAS. Yes, sir.

Mr. CRAMER. What is your budget for waterworks?

Mr. TOUMPOURAS. It runs between \$5 and \$7 million. It has varied from three and a half to five. And I believe the highest budget a few years back—don't hold me to this—was probably \$6 or \$7 million, I am not sure.

Mr. CRAMER. \$6 or \$7 million. And you have had no experience so far as public works, waterworks, is concerned?

Mr. TOUMPOURAS. Sir, I have had experience as administrator. I am very familiar with the waterfront; I have made a study of the waterfront; I have lived on the waterfront; I have been a member of various waterfront organizations; I have held various offices in them. I think I understand the problem of the yachtsman. And I think I understand the waterfront as far as administrative—I don't pretend to be an engineer, sir.

Mr. CRAMER. You had no experience in the department of public works in the field of waterworks other than being assistant to Mr. Di-Natale, did you?

Mr. TOUMPOURAS. Not in the department of public works.

Mr. CRAMER. I think that answers the question. The man isn't qualified for the job he is holding, in my opinion.

Mr. JOHNSON. Mr. Constandy.

Mr. CONSTANDY. Mr. Toumpouras, it is required, is it not, that the letter of assignment of a fee appraiser be signed by an associate commissioner for the commissioner himself; is that correct?

Mr. TOUMPOURAS. Yes, it requires one of the signatures.

Mr. CONSTANDY. It requires the signature of one of the three?

Mr. TOUMPOURAS. Yes, sir.

Mr. CONSTANDY. And on occasion Mr. Dole has been absent from the office, and those letters would be brought to you for signature?

Mr. TOUMPOURAS. It has happened, sir. It was part of the mechanical procedure necessitating the assignment.

Mr. CONSTANDY. At the time you assigned these letters did you have any knowledge of the contents of the letters themselves?

Mr. TOUMPOURAS. Not necessarily, sir. The only reason I signed it was in the absence of Commissioner Dole at that time.

Mr. CONSTANDY. You signed certain letters of assignment in connection with taking in regard to the Gardner area.

Mr. TOUMPOURAS. I think so. This was done in the absence of Commissioner Dole.

Mr. CONSTANDY. In Attleboro area did there come a time when there was some discussion between yourself and Commissioner DiNatale relative to the fact that construction equipment for the highway had been left on property, and there had not been any appraisals made on the property to be taken, nor had there been an assignment of fee appraisers to those properties?

Mr. TOUMPOURAS. Yes, sir. At one time Commissioner DiNatale called me into his office. There apparently was a question of bulldozers, as was explained earlier, in the front yards of some of these homes. The press had called Commissioner DiNatale—I believe he was in his office at the time—he called me in in the absence of Commissioner Dole and wanted some action. And he directed me to go ahead and start a crash program and get the people in right-of-way to get these assignments of appraisers made as quickly as possible, because these people were in dire need of being made an offer for their homes.

Mr. CONSTANDY. Now, as the result of that directive from the commissioner, did you speak to Mr. Dodge?

Mr. TOUMPOURAS. I spoke to Mr. Sheridan, who was the personnel director, as to the assigning of the personnel out of the right-of-way section to work these extra hours to get this work out. And I spoke to Mr. Dodge and told him to accelerate his program because Commissioner DiNatale, as I said earlier in my previous statement, was being pressed that nothing was being done, and it was a request that he accelerate his program.

Mr. CONSTANDY. Now, it became necessary to see that fee appraisers were assigned, did it not?

Mr. TOUMPOURAS. Yes, sir.

Mr. CONSTANDY. In the absence of Mr. Dole, who would be responsible for preparing the work to have these assignments made—Mr. Sheridan or Mr. Dodge?

Mr. TOUMPOURAS. Well, I believe those assignments will have to come out of the right-of-way section.

Mr. CONSTANDY. At least the mechanical part of the function in making up the letters of assignment, is that correct?

Mr. TOUMPOURAS. Well, I had no way of making these assignments. I didn't undertake that, sir.

Mr. CONSTANDY. Did you direct that any assignments be made either by Mr. Sheridan or Mr. Dodge?

Mr. TOUMPOURAS. No, I didn't, sir, not to my knowledge.

Mr. CONSTANDY. Were you aware that Mr. Dole had made certain assignments on that same layout?

Mr. TOUMPOURAS. No, I wasn't.

Mr. CONSTANDY. Did you become aware that Mr. Sheridan made assignments on that particular layout?

Mr. TOUMPOURAS. Not at this time, no, sir.

Mr. CONSTANDY. Mr. Dole testified that a period of some 10 weeks elapsed between the time he sent his E-28 to the fourth floor and the time that he received it back. He was not out of the office that entire 10-week period. Do you know whether Mr. Dole's E-28 form was on the fourth floor during that 10-week period?

Mr. TOUMPOURAS. I am sorry, sir, I never saw it.

Mr. CONSTANDY. You never saw it?

Mr. TOUMPOURAS. No.

Mr. CONSTANDY. Did you ever see the E-28 form that was made out by Mr. Sheridan?

Mr. TOUMPOURAS. No, sir.

Mr. CONSTANDY. You never saw either of the E-28 forms?

Mr. TOUMPOURAS. No, sir.

Mr. CONSTANDY. How soon after Commissioner DiNatale had the conversation with you and you in turn had the conversations with Mr. Sheridan and with Mr. Dodge did the assignment take place?

Mr. TOUMPOURAS. I couldn't answer that. The only thing I did at that time was to start an overtime crash program to get the work done in the right-of-way section, to make the preparation of the necessary mechanics to get this work going.

Mr. CONSTANDY. The mechanics are really fairly simple, aren't they, the E-28 form lists the parcels to which fee appraisers must be assigned? In a comparatively short period of time someone could place names next to the parcels of the fee appraisers who were available to do the appraising work, and letters could be sent out, and the assignments sent on their way. Mr. Dole states that a 10-week period elapsed. Do you know how long after you had the conversation with Commissioner DiNatale the letters went out? Was the crash program carried out at once? Did the people work nights? Did the letters immediately thereafter go out?

Mr. TOUMPOURAS. Yes; I believe they did. The crash program was put right into effect, sir.

Mr. CONSTANDY. Can you fix that time period. The letters were mailed on November 4, 1959, and you would suggest by your answer that a conversation with Mr. DiNatale took place shortly before that.

Mr. TOUMPOURAS. That would be correct, sir.

Mr. CONSTANDY. And it would then follow that Mr. Dole had sent his assignments on his E-28's some several weeks prior to that time to the fourth floor, would it not?

Mr. TOUMPOURAS. I don't know when they went up, because I have no knowledge.

Mr. CONSTANDY. You begin with a fixed date, the letters went out on November 4, and they went out shortly after your conversation with Mr. DiNatale, and the 10-week period that Mr. Dole discusses was somewhere in advance of November 4 by several weeks.

Mr. TOUMPOURAS. It must have been, I have no knowledge or recollection as to how far in advance that was.

Mr. CONSTANDY. Did you learn that Mr. Dole had in fact made up an E-28 in which he assigned the fee appraisers on that project?

Mr. TOUMPOURAS. No, sir; I didn't.

Mr. CONSTANDY. You have no knowledge of that?

Mr. TOUMPOURAS. I have no knowledge of that.

Mr. CONSTANDY. Did you have any conversation with Mr. Sheridan and he with you at the time you told him the commissioner's wish?

Mr. TOUMPOURAS. The only conversation I had with Mr. Sheridan at that time was the fact that the commissioner had ordered this crash program to alert the people and tell them to work the hours, to get the work prepared and get the work out.

Mr. CONSTANDY. And what did Mr. Sheridan say?

Mr. TOUMPOURAS. To follow through on the instructions.

Mr. CONSTANDY. What did he say?

Mr. TOUMPOURAS. I don't recall the exact conversation, he said that—I assumed that he said he would follow the instructions and order the right-of-way section or have the right-of-way section at the time necessary make the preparations.

Mr. CONSTANDY. Did he indicate to you in any way that he had been in receipt of Mr. Dole's E-28 some several weeks before?

Mr. TOUMPOURAS. No, sir.

Mr. CONSTANDY. In connection with the assignment of Mr. C. H. Lawton, Jr. Do you know Mr. C. H. Lawton, Jr.?

Mr. TOUMPOURAS. No, sir; I don't.

Mr. CONSTANDY. Can you recollect the first time you heard his name?

Mr. TOUMPOURAS. I believe it was during the investigation.

Mr. CONSTANDY. Do you recall signing the letter of assignment of Mr. C. H. Lawton to the Damort and Charpentier properties?

Mr. TOUMPOURAS. The only recollection I have, sir, of my signature is when it was presented to me for identification as to the letter during a trial in the city of Boston.

Mr. CONSTANDY. Do you remember receiving the letter from any person for your signature?

Mr. TOUMPOURAS. Yes, sir; I do.

Mr. CONSTANDY. And who brought the letter to you for assignment?

Mr. TOUMPOURAS. It was brought down in the right-of-way section, it was either Mr. Dodge or one of his assistants who brought it down.

Mr. CONSTANDY. Prior to the time that they arrived with the letter for your signature, did you have any knowledge of the fact that there was to be another appraiser assigned to the Damort and Charpentier properties?

Mr. TOUMPOURAS. No, sir; I didn't.

Mr. CONSTANDY. Did you have any knowledge that Mr. C. H. Lawton, Jr., had been chosen as the appraiser to appraise these properties?

Mr. TOUMPOURAS. No, sir; I didn't.

Mr. CONSTANDY. The letter simply came to you for signature, and you had no prior knowledge of the assignment of the property?

Mr. TOUMPOURAS. That is correct, sir.

Mr. CONSTANDY. Do you know Mr. William Jacobs?

Mr. TOUMPOURAS. No, sir; I don't. May I clarify that?

Mr. CONSTANDY. Have you seen a person whom you know to be Mr. William Jacobs?

Mr. TOUMPOURAS. Yes, I have; I have seen him.

Mr. CONSTANDY. And where is it you have seen him?

Mr. TOUMPOURAS. I have seen Mr. Jacobs at the department.

Mr. CONSTANDY. Did Mr. Jacobs ever come to your office?

Mr. TOUMPOURAS. No, sir; he never has.

Mr. CONSTANDY. How frequently would you see Mr. Jacobs at the department?

Mr. TOUMPOURAS. I had seen Mr. Jacobs on occasion waiting outside on the information bench, waiting to see, I believe it could have been the Commissioner Dole, because he wasn't there to see me.

Mr. CONSTANDY. If he were sitting there you don't know who he was waiting to see?

Mr. TOUMPOURAS. No; I don't.

Mr. CONSTANDY. Who else might he have been waiting to see? Whose office would be behind that place?

Mr. TOUMPOURAS. Well, the physical setup of the offices were the information, and then there was an office desk secretary that served at the information and was secretary to Commissioner Dole, and then the first office was Commissioner Dole's, and then my office, and then there was a break, if I can discuss it there was a break where there is a dual office used by myself before I became an assistant and used by Mr. Kelly, and then there is another office which is the main office, and then the other offices—there is another office which was established for the present Commissioner Ricciardi, who was then deputy commissioner, and then Commissioner DiNatile's Office.

Mr. CONSTANDY. He might have been waiting to see any one of these people, including yourself?

Mr. TOUMPOURAS. He wasn't waiting to see me.

Mr. CONSTANDY. You never did see him in your office?

Mr. TOUMPOURAS. No, sir.

Mr. CONSTANDY. Did you ever see him going to or coming from anyone else's office in that area?

Mr. TOUMPOURAS. I had seen him come out of Commissioner Dole's office.

Mr. CONSTANDY. Had you seen him come out of anyone else's?

Mr. TOUMPOURAS. I don't recall seeing him.

Mr. CONSTANDY. How frequently did you see Mr. Jacobs there?

Mr. TOUMPOURAS. Infrequently.

Mr. CONSTANDY. Occasionally?

Mr. TOUMPOURAS. I would say occasionally, I can't pinpoint it.

Mr. CONSTANDY. I have no further questions.

Mr. JOHNSON. Any questions by the committee?

Mr. BALDWIN. I have one observation, Mr. Chairman. I want to say that the testimony last night by the former commissioner of public works and the testimony today is remarkable in how it differs from the position taken by our Secretary of Defense in the hearings involving muzzling over in the Senate. Our Secretary of Defense has taken the position that he is responsible for his Department, and if there are any charges against any members of the Department such as on censorship, he will take the responsibility. And for the last day and a half we have listened to every man at the top level of the Massachusetts Department of Public Works point out clearly how he wouldn't be responsible for anything that has gone on in the department.

Mr. JOHNSON. I think there is one question that hasn't been asked, Mr. Toumpouras. Do you know Mr. Lawton?

Mr. TOUMPOURAS. No, sir; I don't.

Mr. JOHNSON. Mr. Lawton made no contact with you about his position?

Mr. TOUMPOURAS. Not at any time.

Mr. JOHNSON. As fee appraiser?

Mr. TOUMPOURAS. No, sir.

Mr. JOHNSON. Do you know Mr. Harney?

Mr. TOUMPOURAS. No, sir; I don't. I met him once.

Mr. JOHNSON. What kind of a meeting was that?

Mr. TOUMPOURAS. That was last night, sir, I was walking through the hotel.

Mr. JOHNSON. And that was the only time you have ever seen Mr. Harney?

Mr. TOUMPOURAS. That is the only time I ever saw Mr. Harney.

Mr. JOHNSON. Any further questions?

Mr. CRAMER. Now that you know some of these facts and problems what do you intend to recommend in the way of doing something about it? You are still an associate commissioner.

Mr. TOUMPOURAS. Well, Mr. Cramer, the bureau of public roads, the department is working in very close conjunction, and they have made recommendations, they have made various PPM's, they have established a formula that has been improving the condition, and I think the department is off on the right foot, and it is coming into a position where the department and the bureau of public roads will coincide in their thinking on the right-of-way problem.

Mr. CRAMER. You have nothing new to recommend other than what the Bureau has recommended?

Mr. TOUMPOURAS. Sir, I have recommended that we, we as a group, have sat together and discussed this since then, and there have been recommendations that fee appraisers, who have been selected from an approved list sent down by the right-of-way section, that they be presented to the full board of commissioners for a vote of approval. And there are other qualifications that have been set forth by the Bureau and the department jointly as to appraisers and their qualifications, there are various aspects in the field on which the Bureau and the department have worked jointly and have found ways and means to come to an amicable solution.

Mr. CRAMER. The fee appraisers still come off the patronage list, is that right?

Mr. TOUMPOURAS. I don't believe so. I think the fee appraisers right now are recommended—and this is to the best of my knowledge—they are recommended, and they have to be approved.

Mr. CRAMER. By whom?

Mr. TOUMPOURAS. By the right-of-way section and the approved list of the Bureau of Public Roads.

Mr. CRAMER. The Bureau of Public Roads doesn't recommend appraisers.

Mr. TOUMPOURAS. They have to approve the list, sir. And to my knowledge it is going on right now.

Mr. CRAMER. We don't have time to go into how the list is made up within the department, because of the late hour. But I would venture to say that somebody still makes recommendations for it.

Mr. JOHNSON. No further questions.

Mr. SCHWENGEL. Yes, I have. You say since this has come up the commissioners have met and discussed this problem and sought to find new and better ways to get the fee appraisers, and I suppose this is

because you now recognize that there is something wrong, is that right?

Mr. TOUMPOURAS. Well, these conditions, through the investigations, have been brought to the attention of the department.

Mr. CRAMER. And you are convinced that something is wrong and something needs to be corrected, is that right?

Mr. TOUMPOURAS. Well, it is a condition that doesn't satisfy the Federal people and the State people, and I think both parties, the department and the Federal agency, are working in conjunction to make recommendations and remedies as to what they feel should be done.

Mr. CRAMER. And you are aware now, because something is wrong, that millions of dollars have been wasted of the taxpayers' money?

Mr. TOUMPOURAS. Sir, I am not aware that there are millions of dollars being wasted, sir.

Mr. CRAMER. If money has been wasted and the public interest has not been served, are you prepared to make any recommendations to correct and to recover for the State and for the Government?

Mr. TOUMPOURAS. I think that there have been numerous meetings held with the Bureau and the department and I think with the legal agency of the Commonwealth, and they are reviewing the solution to this problem, sir.

Mr. CRAMER. Are you in complete support of that program to restore the money that has been taken from the public illegally, from the public treasury?

Mr. TOUMPOURAS. Sir, I am in complete accord with anything that is good for the public interest, and if there is any indication where there has been any wrong to any of the citizenry of this Commonwealth or this great land of ours, it should be corrected.

Mr. CRAMER. And you will lend every effort at your command to do so?

Mr. TOUMPOURAS. I will, sir, to the best of my ability.

Mr. JOHNSON. If there are no further questions, we will excuse the witness. And the subcommittee will adjourn until 10 a.m. on February 19.

(Whereupon, at 6:35 p.m. the subcommittee adjourned, to reconvene at 10 a.m. Monday, February 19, 1962.)

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

MONDAY, FEBRUARY 19, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to adjournment, at 10:10 a.m., in room 1302, New House Office Building, Hon. John A. Blatnik (chairman of the special subcommittee) presiding.

Present: Representatives Blatnik, Baldwin, Clark, Cramer, Gray, Kluczynski, McVey, Robison, Scherer, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. The special subcommittee on the Federal-aid highway program will please come to order.

We are resuming the session, continuing public hearings on right-of-way acquisition processes in the State of Massachusetts.

We have some preliminary items to submit for the record. Chief Counsel Walter May.

Mr. MAY. Mr. Chairman, since the hearings began 2 weeks ago, the General Accounting Office has submitted another report to Congress. This one has to do with the review of selected activities of the Federal-aid highway program in the State of Tennessee.

I would ask at this time we make this particular report of the General Accounting Office exhibit 1-I, so that it can be added to the initial reports.

Mr. BLATNIK. All right. Without objection, it is so ordered.

(The document referred to was marked for identification and received as "Exhibit 1-I," and appears in the appendix.)

Mr. MAY. Secondly, Mr. Chairman, I would like to read into the record a letter which we received from the Bureau of Public Roads. This pertains to certain cost data. This letter was directed to Mr. George Martin of our staff from Mr. J. C. Allen, director of administration, Bureau of Public Roads, and I will quote it:

DEAR MR. MARTIN: The enclosed analysis of estimated costs for completion of the Interstate System is furnished in response to your recent request.

With respect to right-of-way acquisition costs, the 1961 cost estimate showed an estimated total cost of \$6,275 million. A comparison of actual costs with 1961 estimate costs during the period from January 1, 1960, through November 30, 1961, shows actual right-of-way costs running about 4.2 percent above the

1961 estimate. On this basis, total right-of-way costs would amount to \$6,465 million instead of \$6,275 million, or an increase of about \$190 million. This increase in ROW costs is more than offset by decreases in the total costs of preliminary engineering and construction, so that the overall estimate of costs is reduced by about \$86 million.

Based on the cost of right-of-way acquisition work authorized, it is estimated that 9,840 miles of rights-of-way were acquired prior to the 1961 cost estimate, 6,210 miles were acquired during the period from January 1, 1960, through November 30, 1961, and 20,420 miles were remaining to be acquired on December 1, 1961. These mileages are all estimated on the basis of pro rata costs, since we have not been able to develop an entirely satisfactory procedure for reporting the mileage of right-of-way acquisition work.

I trust that this information will be helpful to you. Please advise if I may be of further assistance.

Sincerely yours,

J. C. ALLEN,
Director of Administration.

Mr. Chairman, we have seen that it is estimated that 16,050 miles of right-of-way have already been acquired, and 20,420 miles remain to be acquired just for the Interstate System. I have to interpret, but we realize when we say right-of-way costs will amount to \$6,465 million, that is, of course, \$6,465 million is now estimated will be spent.

Could we make that exhibit 24, Mr. Chairman?

Mr. BLATNIK. Without objection, it is so ordered.

(The document referred to was marked for identification and received as "Exhibit No. 24" and is retained in subcommittee files.)

Mr. MAY. Now one more item. Mr. Kopecky has more up-to-date figures with regard to right-of-way costs, and fee appraiser costs, in Massachusetts. Mr. Kopecky, would you give us that more recent data, please?

Mr. KOPECKY. Yes. The estimated cost of properties acquired in 1961 is \$19,216,000.

Mr. MAY. This would be cost to the Commonwealth of Massachusetts for properties in connection with the construction of Federal-aid highways?

Mr. KOPECKY. That is correct. The total cost of 1961. The 5½-year total for this item, from July 1956, through the end of 1961, is thus estimated to be in excess of \$84 million.

Mr. MAY. Just a moment, so we will understand. From July 1, 1956, through 1961, the Commonwealth of Massachusetts, for Federal-aid highways, has spent for right-of-way purposes an estimated \$84 million?

Mr. KOPECKY. That is correct. The Federal-aid portion of the 1961 figures which I mentioned is estimated to be \$15,253,000. Accordingly, the total Federal-aid participation from July 1956 through the end of 1961 is estimated to be in excess of \$63 million.

Mr. MAY. So of that \$84 million it is estimated that the Federal Government's share will be \$63 million?

Mr. KOPECKY. That is correct. Now, with regard to payments for appraisal fees, a different item—a separate and additional cost item—the estimated 1961 cost will be \$340,000. The total for this item from 1956 through 1961 is thus estimated to be in excess of \$1,338,000. The Federal-aid portion of this cost item is estimated to be in excess of \$963,000.

Mr. MAY. So just fees to fee appraisers used in connection with Federal-aid work in Massachusetts from 1956 through 1961 is esti-

mated to be \$1,338,000, and the Federal Government's share of that is estimated to be \$963,000?

Mr. KOPECKY. That is correct. We have been advised that the State has not yet submitted any bills for appraisal fees to the Bureau of Public Roads, requesting that the Bureau of Public Roads pay its proportionate share under the Federal-aid program. Accordingly, no reimbursement for appraisal fees has yet been made by the Bureau of Public Roads.

Mr. MAY. So from 1956 through 1961 the Bureau of Public Roads has participated not at all in reimbursement to the State for expenses in connection with the retention of fee appraisers?

Mr. KOPECKY. That is correct.

Mr. MAY. That is, because the State has not submitted a bill to the Bureau. Is that right?

Mr. KOPECKY. That is correct.

Mr. MAY. Mr. Chairman, it is true, as we have seen in the course of our investigations, many of the States are not at all prompt in submitting bills or vouchers to the Bureau of Public Roads. They let years go by before the vouchers are submitted for payment to the Bureau, and we have learned in our investigation that the longer you allow the time to pass, the more difficult it becomes to check on them. This would seem to be a matter of concern to the committee, the Bureau of Public Roads, and the States. The States are entitled to reimbursement, and if they would promptly get their vouchers in they would get reimbursed.

Mr. Chairman, may we call Mr. Oscar Beasley for just a few moments?

Mr. BLATNIK. Mr. Beasley, will you please come to the witness chair?

Mr. MAY. Mr. Beasley has already been sworn, Mr. Chairman.

Mr. Beasley, we heard your testimony earlier in the hearings with respect to the work which you did in the Attleboro area, Massachusetts. Did you also prepare a case study report for Attleboro, Mass.?

TESTIMONY OF OSCAR H. BEASLEY—Resumed

Mr. BEASLEY. Yes, sir. Our firm was assigned to make a case study of a limited portion of Interstate Highway 95 in South Attleboro to determine procedures and practices employed and followed in planning, programming, appraising, acquiring of right-of-way, and the certifying of right-of-way expenditures for Federal-aid reimbursement by the department of public works, State of Massachusetts.

The area selected for study was a small segment of Interstate Highway 95, extending from the Rhode Island State line to Washington Street in Attleboro, a distance of approximately 2,500 linear feet of right-of-way, involving approximately 82 parcels of property, 45 of which had value in excess of \$5,000.

Mr. MAY. How did you go about the preparation of this report, Mr. Beasley?

Mr. BEASLEY. We were furnished photo-reproductions of all of the fee appraisals, the department of public works forms, staff appraisals, right-of-way prints, construction drawings, P.S. & E. estimates, planning surveys, and were also permitted to examine all files and records

of the department of public roads at the Boston office, which we thought were pertinent to the case study.

Mr. MAY. It is my understanding that the Bureau of Public Roads issued certain instructional memoranda to the States prescribing minimum factual information which would be included in each fee appraisal report in support of the certified values submitted for Federal-aid reimbursement. Is that correct?

Mr. BEASLEY. That is correct. The Bureau of Public Roads issues policies and procedure memoranda which are transmitted to the State agencies, setting forth the minimum standards of appraisal to qualify for Federal-aid reimbursement.

Mr. MAY. In connection with that study, how many appraisal reports did you review, and what were the results?

Mr. BEASLEY. We reviewed approximately 70 fee appraisal reports.

We conducted this review by establishing an itemized checklist of questions taken from the department of public works specifications, and then using this checklist of questions we reviewed each fee appraisal, giving a yes or no answer to the specific question.

We found in the 70 appraisals reviewed, that 6 met the minimum specifications, and 64 did not.

Mr. MAY. We might stop right there, Mr. Beasley. You used the Bureau of Public Roads' requirements plus the departmental requirements, and based on those requirements you found that of the 70 fee appraisal reports reviewed, 64 did not meet those specifications. Is that right?

Mr. BEASLEY. The department of public works specifications were more comprehensive than the Bureau of Public Roads. It was the measurement of the appraisals by the department of public works specifications which developed the fact that 64 did not meet the minimum requirements and 6 did.

Mr. MAY. Yes. Mr. Beasley, I would like to interrupt.

Mr. Chairman, we have already heard from Mr. Ellis, who was right-of-way engineer for many, many years, and headed up the right-of-way division of the department of public works. He did set forth certain instructions, and these instructions were supposed to be passed along to the fee appraisers, and they were supposed to comply with the requirements set forth in those instructions. We have already seen they did not.

Here is another example. Mr. Beasley reviewed 70 appraisals and found that 64 did not meet the minimum requirements. What else did you do?

Mr. BEASLEY. Because of the overwhelming number of appraisals which did not conform fully with the State specifications, we prepared a checklist of facts which incorporated the essential data prescribed by the U.S. Bureau of Public Roads, and these were again analyzed in the light of the minimum weighted facts. We found in this instance 32 out of 70 appraisals contained the minimum elements of appraisal.

Mr. MAY. Now we have a situation where again you reviewed the appraisals on the basis of the minimum elements. Is that correct?

Mr. BEASLEY. That is correct.

Mr. MAY. And you found 32 did, but 38 did not meet the minimum elements of an appraisal. Is that right?

Mr. BEASLEY. That is correct.

Mr. MAY. Some 54 percent were of little worth. Is that right, Mr. Beasley?

Mr. BEASLEY. That is correct.

Mr. MAY. Did your review indicate any relationship between fee appraisals and property settlements?

Mr. BEASLEY. Well, it was our observation that the review board figures, which were set and used as a basis for negotiation at time of settlement, were weighted averages of appraisal totals, and disregarded the appraisal facts. It appeared to us that there was no professional review of the content of fee appraisals.

Major reliance was placed on fee appraisal reports for the establishment of values used in the negotiation and settlement, but it could be seen, if figures were taken without question, and weighted for an average by a review board, then this review board might have been seriously misled in its conclusions.

To illustrate, if real estate sales as reported in the fee appraisals, and apparently relied upon for the establishment of market data, were found to be nonexistent or to be improperly reported and analyzed, then the fee appraisers' reports, as well as the review board's conclusion, would be predicated upon erroneous information.

I have heretofore indicated that in connection with our review in Attleboro, supermarket location sites were used in support of land having no similarity or comparable use. In other instances reviewed, sales either did not exist or were improperly itemized or classified. I considered this deficiency in appraisal practice which is at variance with specifications, when related to dollars and cents figures, could have cost from 10 to 50 percent of the fair market value of the majority of the properties reviewed.

If these percentages were applied to total right-of-way costs, the amount of money could become quite impressive.

Mr. MAY. I think we will receive additional information along this line as the hearings progress, Mr. Beasley.

You mentioned that this study was limited to some 2,500 linear feet of a given project. How many independent fee appraisers did the Commonwealth use for those 2,500 feet?

Mr. BEASLEY. I believe they used 13.

Mr. MAY. Thirteen fee appraisers?

Mr. BEASLEY. That is correct.

Mr. MAY. To appraise properties extending along 2,500 feet?

Mr. BEASLEY. That is correct.

Mr. MAY. What do you have to say about that?

Mr. BEASLEY. Well, I feel that this condition, of course, creates a confusion of values. You had 13 independent fee appraisers coming in from different parts of the State, each having a little parcel to do, or 1 or 2 parcels to do; and the amount of time and effort that would be given to it, it became obvious as we reviewed the reports, we could see what had been done. The fluctuation in values just created a confusion which didn't help anyone. It just more or less hindered rather than helped.

Mr. MAY. Considerable thought should be given to this sort of a problem.

Mr. Beasley, if you assigned 13 fee appraisers, each one receiving 2 or 3 or 4 or 5 parcels, each fee appraiser has to get in his automobile and travel down to the area, and has to do a lot of preliminary work.

He has to search out comparables, and has to study market data, and has to do everything for one or two parcels that he would have to do for a larger number of parcels. Is that right?

Mr. BEASLEY. That is correct. You would just—even if the man did a conscientious job, he couldn't afford it.

Mr. MAY. He couldn't afford to do it for the fee?

Mr. BEASLEY. He couldn't afford it.

Mr. MAY. So a person who is assigning fee appraisers must take into consideration all of these factors, must he not?

Mr. BEASLEY. I think that it would be wise.

Mr. MAY. And the indiscriminate assigning of fee appraisals to just anybody becomes most important.

Mr. Chairman, in the course of our work we talked with hundreds of fee appraisers. Though we found that the competent and legitimate appraisers were somewhat reluctant to accept work from the Commonwealth, frequently they complained about fees. These legitimate firms are not prone to accept a \$200, \$300, or \$400 fee to go down to a given area and do one or two parcels.

If some thought were given to a more appropriate assignment of parcels, some of these firms and some of these MAI members would, for reasonable fees, go into these areas and make studies of several parcels. In the long run the total fee on a given project might not be any more and, in fact, it could be sometimes less. Is that right, Mr. Beasley?

Mr. BEASLEY. It could be less expensive in the long run and you would get a much better job. Of course, our firm has always been an advocate of work in sufficient volume so as to give a continuity of assignment, and to be able to have sufficient work in hand to justify the direct cost of research which is necessary in this kind of assignment.

I feel that experience locally and nationally supports this type of conclusion, where you have large volumes of properties to be appraised and studied. A quick, one-shot appraisal by anyone is really unfair to the person acquiring these services, as well as to the individual who would be the recipient of the conclusion on values, because you have this confusion which can develop from a divergence of opinion.

Mr. MAY. So you found no uniformity in values, did you?

Mr. BEASLEY. I have an exhibit which I prepared just taking the four corners in Attleboro in the area where we had heretofore discussed the properties concerning the Damort Land Corp. and the H. & B. and the Charpentier property, and by projecting these graphs or bars vertically, I found individual appraisers having the same classification of property, the same use—industrial use—just across the street from each other, right in the close confines of one small area, varied in their land values from a low of approximately 18 cents to a high of around 75 cents a square foot.

Now, that does not sound like much, but when you relate it to dollars per acre, it amounts to a lot of money. When you go beyond and begin to analyze these facts and see that the content of the appraisal as it is put together lacks comparable sales in support of any of this kind of information, then you finally conclude that what they are doing is taking figures out of thin air, because there is no support for it. You could take these bar graphs and compare each of these properties which are at these four corners of this street, and

see with the same sales, which were basically supermarket sales, the persons who had appraised the Damort Land Corp., which were Mr. Schwartz and Mr. Collins, set one set of values on one property and another set on another property and another on another, and these values fluctuated, and they lacked support for the conclusions—support of comparable sales.

Mr. MAY. We have heard considerable testimony with respect to the Attleboro project. Apparently there was an obvious lack of time given to the appraisers for this job. Do you have some comments along that line, Mr. Beasley?

Mr. BEASLEY. Well, we came into Attleboro in May 1960 and construction was well underway at that time. A lot of properties had not been acquired as yet and there was a lot of public to-do there concerning what would become of individuals in certain hardship cases. It was, or it appeared from our study, that there would be about \$2,610,000 worth of right-of-way which had to be acquired in this lower Attleboro area for a 3½ mile stretch, and I don't see how they could have possibly acquired it in the 6 months which they had been working on it at that time.

Mr. MAY. The contractor was there doing his grading, and proceeding with the road construction, and people were still living in the homes, and the properties had not been appraised, and no offer had been made to the people.

Mr. BEASLEY. Well, some of them were in negotiation. Others seemed not clearly to understand what was happening, or, if they had had offers presented to them, they were very vague to us concerning it.

There were a few who had settled. In other words, when we talked to some property owners, they had settled, and, as a matter of fact, they told us what their settlements were. There was this transition of activity which created an indefinite status for a lot of these people, and a lot of them hadn't received their money and did not know where they could go, or what they could do, until they got their money, which was also a problem.

Mr. MAY. This type of situation creates not only a tremendous hardship on the property owners, but, Mr. Chairman, we have seen in some of our prior hearings that it creates difficulty to the contractor. In building a project to specifications it is very difficult to do a proper job of clearing, grubbing and grading if faced with working around houses and other properties.

How much additional time do you feel should have been given for proper acquiring of right-of-way, Mr. Beasley?

Mr. BEASLEY. Well, this is simply a matter of opinion, and there might be those who are more astute in this particular field than I, but it would appear to me that 6 months would have been a fair estimate there—to have allowed one, maybe, additional 6-month period, in order to effect the right-of-way acquisitions.

Mr. MAY. At any rate, you feel this particular project would be a good example of lack of leadtime?

Mr. BEASLEY. I think it is quite good.

Mr. MAY. Thank you very much, Mr. Beasley. We will hear additionally from Mr. Beasley as the hearing progresses, Mr. Chairman.

Mr. SCHERER. Mr. Chairman.

Mr. BLATNIK. Mr. Scherer.

Mr. SCHERER. Mr. Beasley, your firm is located where?

Mr. BEASLEY. Here in Washington, D.C.

Mr. SCHERER. You don't have any offices in Massachusetts?

Mr. BEASLEY. No, sir.

Mr. SCHERER. When was the first time that you or your firm heard of the Massachusetts road scandals?

Mr. BEASLEY. The word "scandal" bothers me.

Mr. SCHERER. All right. Heard of the——

Mr. BEASLEY. I will answer in this way, sir——

Mr. SCHERER (continuing). Heard of the Massachusetts irregularities.

Mr. BEASLEY. I believe in January or February of 1960.

Mr. SCHERER. Thank you. That was 2 years ago?

Mr. BEASLEY. Yes, sir.

Mr. SCHERER. Who approached you?

Mr. BEASLEY. I was called by a special assistant to the Administrator of Public Roads, Mr. Charles S. Woolsey.

Mr. SCHERER. And who was the Highway Administrator at that time?

Mr. BEASLEY. Mr. Tallamy.

Mr. SCHERER. All right. Would you relate the circumstances of that?

Mr. BEASLEY. He wanted to know if we would be available to do some work in the State of Massachusetts. We indicated that we would be available and, thereafter, I would say about 2 or 3 weeks I took—or I was sent to Boston by Mr. Woolsey to meet with some of the Bureau of Public Roads officials in Boston, and they basically briefly reviewed some of the problems that they felt they had before them, and we discussed the procedure, in fact, as to how we could approach the problem of getting to the heart of the values. Also time was a major factor and they wanted to know how soon we could put men in the field and could go to work on this work. These facts were discussed and——

Mr. SCHERER. What was the date on which you went to Massachusetts and had these discussions?

Mr. BEASLEY. I believe I went to Massachusetts quite a number of times during February and March, if I remember correctly.

Mr. SCHERER. Your first trip to Massachusetts was in February, 2 years ago?

Mr. BEASLEY. Yes. I believe that is correct. I would have to check my date book on that, but it is back in that period there.

Mr. SCHERER. And you were employed then by the Bureau of Public Roads to make these appraisals?

Mr. BEASLEY. We were subsequently employed.

Mr. SCHERER. When were you employed?

Mr. BEASLEY. There came the problem first, of determining how we would work and as to what would be the nature of the contract we would receive; and it became necessary for us to look at the assignments that they wanted to give us and consider our cost estimates, and to determine price, and then give it to the Bureau of Public Roads, and then they would have to go through the mechanics of the proper authority, et cetera. So there was a timelag there before May of 1960 of several months.

Mr. SCHERER. When you were actually given a contract to go forward?

Mr. BEASLEY. Yes. The contract—we were given instructions to proceed while the contract was being written. Actually, I believe that is correct.

Mr. SCHERER. And that took place between February and May of 1960?

Mr. BEASLEY. Yes, sir; that is correct.

Mr. SCHERER. You were then in the picture from February 1960 on?

Mr. BEASLEY. I believe—and I can verify that specific time, but I believe I am correct in the general time area; yes, sir.

Mr. SCHERER. When you talked to the Bureau of Public Roads, did the information it presented to you with reference to the irregularities in Massachusetts indicate that the Bureau of Public Roads had up to that time made studies of its own concerning the situation in Massachusetts?

Mr. BEASLEY. I think that some clarification along this line is necessary. I believe it is a fair statement to say that the U.S. Bureau of Public Roads officials, who were in charge of the total program, were aware of the fact that there was a problem with respect to the cost of right-of-way in the State of Massachusetts. The identification—

Mr. SCHERER. As early as when?

Mr. BEASLEY. I think that someone from the Bureau of Public Roads could perhaps answer this more appropriately than I. I know that they had been working back in 1959, in the latter part of 1959, before we came in in 1960; and certain of their teams of appraisers from different parts of the States had been brought in.

Mr. SCHERER. When you say “their appraisers” you mean Bureau of Public Roads staff appraisers had been in Massachusetts examining this situation before you were actually approached?

Mr. BEASLEY. That is correct. They had done substantial work in spot checking projects throughout the State.

Mr. SCHERER. As a result of the substantial work that the Bureau of Public Roads had done, it was able to furnish you with some basic material on which you were then able to go forward with the job you were designated to do?

Mr. BEASLEY. I don't like to quibble over words again, but to get back to the problem, they were not sure, and after consulting with us, we were not exactly sure what the nature of the problem was. That's why we got into the question of making these studies in Attleboro, Wakefield, et cetera. The only way we knew it could be approached at the time was to start at the very beginning, and to make basic economic studies and come up with a conclusion of value on each individual property, and prepare these analyses, and graphs, and so forth, to determine what was going on, and then begin to work from there.

Mr. SCHERER. You said they had done substantial checking and substantial work in Massachusetts since 1959. When you started the work you had the benefit then of whatever work they had done since 1959?

Mr. BEASLEY. No, sir. That is not correct.

Mr. SCHERER. Tell me what is correct.

Mr. BEASLEY. Certain projects were selected for our study, and the only thing we were given was the right-of-way print, or the construc-

tion drawings, and the names of the individuals who owned the properties. They did not give us any of the conclusions which they had themselves reached.

Mr. SCHERER. I understand they didn't give you that, so you would not be prejudiced by what they had found.

Mr. BEASLEY. That is correct.

Mr. SCHERER. But you were aware of the fact that they had done substantial work in Massachusetts in order to come to the conclusion that they needed expert help such as you were able to give.

Mr. BEASLEY. That is correct. That is correct. I was aware—there was no mystery as far as we were concerned. They had to make a disclosure to us they had a problem and they needed professional advice and consultation on it, and these matters were discussed. The true nature of what the problem was, as I said, was not defined at that time, except that they knew that there was a lot of money being paid for right-of-way and they didn't feel it was all justified, as I understand it.

Mr. SCHERER. All right. Now, you were first contacted, you said, in February. Had the Bureau of the Public Roads on the basis of its investigations already held up Federal funds?

Mr. BEASLEY. I would have to ask that you ask that of someone else. I am not positive of the dates when Federal funds—

Mr. BLATNIK. For the gentleman's information, we will have the bureau of public roads testify as to what they have done.

Mr. SCHERER. Does Mr. May know, for the purpose of the record, when the Federal funds were first withheld from Massachusetts?

Mr. MAY. Could we have Mr. Joseph O'Connor?

Mr. SCHERER. I would like to get it in the record.

Mr. MAY. It is not that clear.

Mr. SCHERER. That simple?

Mr. MAY. No. It is not that simple.

Mr. SCHERER. Can we just have it for the record? I understand it was in January that the first funds were withheld, in 1960. Am I correct?

Mr. MAY. I don't know that funds were actually withheld at that time, Congressman. I think Mr. O'Connor could clarify it in just a few moments for us. There is a certain period that normally takes place before a State is reimbursed for money spent, and there have to be certain audits done, and it is my understanding that the Bureau of Public Roads stopped auditing as of that time, and the result was that the State did not receive its money. It was not a simple cutoff by the Bureau of Public Roads saying, "We will not pay you," but they just stopped going through what would be the normal procedure, so it is somewhat complicated along that line.

Mr. SCHERER. And that was started in January of 1960?

Mr. MAY. I believe so.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Mr. Beasley, you made reference a moment ago to your work in Attleboro, Wakefield, and so forth. There may already have been some testimony which I do not specifically recall regarding the areas in Massachusetts where you conducted your thorough reviews.

Mr. BEASLEY. Yes, sir.

Mr. WRIGHT. Aside from Attleboro, where else did you do this?

Mr. BEASLEY. We made some reviews in Seekonk, Mass., and a bordering area of Wakefield-Reading, Mass., Gardner, Worcester, Lowell, Peabody. I believe that covers it.

Mr. WRIGHT. As a summary of your findings, and I may be getting a bit ahead of the story, was what you discovered in Attleboro thoroughly atypical, or did you find similar irregularities in the land-takings in these other areas in Massachusetts?

Mr. BEASLEY. Well, there are many problems, Congressman. I think I would say that I believe I know some of the other subjects that will be discussed, and perhaps to just make a summary of fact would be unfair to the normal course of this hearing, because it would perhaps lose some of its—

Mr. WRIGHT. I am not trying to ask the gentleman to make a statement which is going to make other information, which will later be disclosed, of less importance or less effect. But let's see if we can't at this point, in fairness to the hearing and to the witness, make some characterization as to whether or not these irregularities that were discovered in Attleboro were duplicated or present in other areas of the State as well.

Let me simply ask the question this way: Did you find in these other places—Seekonk, Gardner, Worcester, Lowell, Peabody, that there were irregularities in the method of appraisal?

Mr. BEASLEY. We are dealing in words. I will answer you in this way, sir: Our work was to review appraisals and to determine economic market data. In our opinion we found areas—projects or properties in all of the areas which we studied which we felt justified examination by others who had the authority to inquire behind just the question of value. Our reports were submitted to the Bureau of Public Roads with certain recommendations, and the Bureau of Public Roads in turn, through their Project Examination Division, instituted examination into the details concerning these various projects which we recommended review on.

Also I am aware that this committee has also followed in behind the Bureau of Public Roads. So they are the judge in the final analysis of the, let's say, properness or improprieties which might exist.

The only thing we could do was to point out what we considered were deficiencies which should be questioned.

Mr. WRIGHT. You pointed out deficiencies which you thought should be questioned. There came a time, I suppose, when you, as a result of your work, prepared some kind of comparative analysis which would pinpoint those questionable areas in which you felt that there might be deficiencies, and presented this to the Bureau of Public Roads. Is that the way it worked?

Mr. BEASLEY. Yes, sir. We made written reports.

Mr. WRIGHT. Did your written reports to the Bureau of Public Roads point out what you regarded as possible deficiency areas in a substantial number of these other cases?

Mr. BEASLEY. Yes, they did.

Mr. WRIGHT. When were those filed?

Mr. BEASLEY. I beg your pardon?

Mr. WRIGHT. When were these reports of yours filed with the Bureau of Public Roads?

Mr. BEASLEY. They have come forward progressively through 1960 and 1961. I think that the last of our reports was submitted in the latter part of 1961.

Mr. WRIGHT. You have not said that the findings about which you have testified at some length in the Attleboro area, were necessarily typical of your findings in the other areas. I want to make this clear because of your apparent reticence at this particular time to discuss the others.

Mr. BEASLEY. I think that the record will bear itself out in time. I think that is the thing I prefer, because these gentlemen have facts I do not have, and far be it from me to say something that might prejudice someone, or some transaction in the future.

Mr. WRIGHT. I am quite sure that is true, Mr. Beasley, and I appreciate your concern for the orderly development of the hearings, but at the same time you have facts which members of the committee do not at this time have, and while I am not trying to elicit from you any testimony which will make later disclosures anticlimactic, at the same time I think that you can appreciate the concern of the committee.

We have had testimony this morning from the presentation of a document from the Bureau of Public Roads which states that within a very few months during 1961 the total estimate of the cost of right-of-way acquisition of the interstate Federal-aid highway program has increased from \$6,275 million to a current estimate of \$6,465 million, or an increase of 4.2 percent since the earlier 1961 estimate was made to us. Now you have testified to us that in this Attleboro area, examining the land takings and the work of 13 different fee appraisers over an area of some 2,500 linear feet of taking, that 64 out of 70 appraisals failed to conform with the department of public works requirements.

You testified further that only 32 of these 70 appraisals conformed even with the minimum necessary elements of an appraisal. We deduce, therefore, that 54 percent of the appraisals in the Attleboro area by 13 different fee appraisers along this 2,500 linear feet—that 54 percent of the total appraisals were, I think you stated, of little value.

Now, I think the committee naturally comes to a point now where it wants to know how typical this is. Obviously, you had gone into those areas which appeared to the Bureau of Public Roads, as a result of their study, to be atypical. I think we would be very frightened if we were to think that this kind of thing were typical throughout the entire takings throughout the United States.

But I have the uneasy feeling as a result of your remarks that it was more nearly typical than I would like to think it was.

Mr. BEASLEY. May I say this: I have been fortunate enough to have seen an awful lot of this United States, and seen this interstate highway program throughout the United States in many places. This is not typical of the Federal highway program.

We have here in the State of Massachusetts a certain, let's say, problem, just as you would have a problem regardless of what kind of a business you run. It does not follow that this condition exists nationally, nor does it follow that each and every State is following in this same procedure. As a matter of fact, the Bureau of Public Roads officials can speak for themselves, but I am acquainted with it and I

know that there are really tens of thousands of truly dedicated highway officials and professional appraisers and right-of-way negotiators who get up every morning and go to work and come home every night and sleep with a good conscience. It is unfortunate that these kinds of conditions exist. It may be that we must face the fact that a certain segment of our society just will not toe the line, and there has to be some means of controlling them.

But this is beyond—this type of thing in my personal estimation is beyond the routine of an orderly government. This is something that has to be looked at in its true light and sized up and handled. If it does exist in other places it is beyond the routine of orderly government.

I feel it is only proper to examine into maybe other places as a result of this and determine a sample as to just exactly what does exist, but I don't feel that the publicity that is being generated from this hearing and the exposé of facts which have so far been revealed, should be an indictment of the total Federal-aid highway program, because it is a wonderful thing and it is needed in this country, and it will serve a defense purpose as well as an everyday useful purpose; and I am greatly concerned about exactly this one point here.

Mr. WRIGHT. I am deeply appreciative of that statement. It is reassuring. Are you familiar with the General Accounting Office reports in the record of this hearing?

Mr. BEASLEY. No, sir. I have not had the privilege of reading those reports.

Mr. WRIGHT. Some 20 or 21 other States have been cited in these reports as having certain deficiencies in their operating methods and the controls they applied. What other States besides Massachusetts have you examined with as much care on behalf of the Bureau of Public Roads as you have devoted to this particular study?

Mr. BEASLEY. The only other assignment involving a study in depth was in Indiana some years ago, when there was a particular problem in the State of Indiana around Gary. Aside from that, our assignments have been on a spot basis with respect to particular problems that might arise, and they have each been—the attention of the Bureau of Public Roads has been brought to these through the orderly process of government, and they have, in turn, sent myself or others to examine into the depth of facts so as to determine the wisdom of decisions which must be made.

Mr. WRIGHT. In the Indiana situation, of course, we recall that there was a somewhat irregular, if not to say scandalous, circumstance involved there; but you would say that you are not really qualified as a result of your personal experience to be an expert on all the other States?

Mr. BEASLEY. I would like to say absolutely not. There are men in the Bureau of Public Roads who deal with the 50 States in our whole American ownership throughout the territories, and so on, each day, and they are quite conversant with these facts, and I feel it would be improper for me to presume to present any fact pertaining to the national picture.

Mr. WRIGHT. Thank you very much.

Mr. SCHERER. May I ask, in view of Mr. Wright's question, one or two further questions?

Mr. BLATNIK. Mr. Scherer.

Mr. SCHERER. After you had been employed by the Bureau of Public Roads to make your investigations, did you work alone, your company, or did you have the cooperation of the Bureau of Public Roads at the time you developed these graphs and the other evidence which you submitted to this committee?

Mr. BEASLEY. No, sir. That has been a coordinated effort. We worked alone to start with. As I say, there was a problem of identifying the problem, and the first thought was to employ someone to make a complete unbiased analysis of certain specific projects and then we could set down these figures and see what we had, and what caused these irregularities or discrepancies, which might be a more proper word, to exist.

Once our reports were finalized, the Bureau of Public Roads officials and their Project Examination Division people and the appraisers, and all concerned, worked together, I would say, as closely and as harmoniously as you could probably get, almost on a 24-hour-a-day basis, trying to get to the heart of this problem, and to see whether or not we understood it, and what the problem was, and how they could meet it.

Mr. SCHERER. Did you work with any other agencies of the Federal Government during this period of time?

Mr. BEASLEY. I personally confined my efforts to the U.S. Bureau of Public Roads. Of course, of necessity, I had to be called in and talked to the U.S. attorney and to the various other agencies that are interested.

Mr. SCHERER. You mean other intelligence agencies of the Government?

Mr. BEASLEY. That is correct.

Mr. SCHERER. They were involved in this investigation also?

Mr. BEASLEY. Well, I am not qualified to speak on that subject. I don't know just exactly how they were assigned, or who is working for whom.

Mr. SCHERER. I understand that.

Mr. BEASLEY. Yes, sir.

Mr. SCHERER. During the time that you were working on this project, after you had made your initial investigation and report, you did work with other agencies of the Government, among them the Department of Justice. Is that right?

Mr. BEASLEY. Only as designated by the Bureau of Public Roads. In other words, they would tell me that on such-and-such a day I was to meet at such-and-such a city—

Mr. SCHERER. The Department of Justice was involved in this investigation at the same time as you were?

Mr. BEASLEY. Exactly.

Mr. SCHERER. You had some consultations with the Department of Justice, did you not?

Mr. BEASLEY. That is correct.

Mr. SCHERER. At the direction of the Bureau of Public Roads?

Mr. BEASLEY. That is correct.

Mr. SCHERER. You assisted the Department of Justice in the preparation of possible criminal prosecutions, did you not?

Mr. BEASLEY. Yes, sir. I have testified in some of the cases.

Mr. SCHERER. And who were the people in the Department of Justice with whom you worked specifically, that you remember? Was it Elliot Richardson?

Mr. BEASLEY. Yes, sir. I talked with him quite often in the original phases of this work.

Mr. SCHERER. All right. That is all.

Mr. BLATNIK. Thank you, Mr. Beasley. First we have a few more items and we will hear from Mr. Walter May.

Mr. MAY. Mr. Chairman, at this point I would like to speak of a letter received in the department of public works from an individual named Joseph J. Barca. This letter is on the letterhead of Joseph J. Barca, and reads as follows:

JOSEPH J. BARCA,
CONSULTANT, REAL ESTATE AND APPRAISALS,
Boston, Mass., January 28, 1959.

Commissioner ANTHONY N. DiNATALE,
Department of Public Works, Boston, Mass.

DEAR SIR: The following is an outline of my background and qualifications as a real estate appraiser:

For the past 25 years, I have been self-employed as a real estate broker, appraiser, developer and builder, mortgage broker, and have assisted in the liquidation of large estates for various trusts and realty offices.

For the past 15 years, I have been intimately associated with several offices and firms (blank) in the capacity of an appraiser and broker with other duties involving subdivisions both residential and commercial, and with (blank—a chain of stores) finding store locations, renegotiating leases and, where it was in the best interest of the store chain, negotiated the purchase of the property involved.

I have, in the past, assisted attorneys (blank) in the liquidation of estates for both private and court purposes where the services of an expert appraiser were needed.

I now maintain an active real estate office in Boston at the above address and for many years maintained the same type office at 20 Beacon Street.

Respectfully submitted.

JOSEPH J. BARCA.

Previously in our hearings, Mr. Chairman, we heard about letters submitted by individuals seeking fee appraisal work. This is one of them.

I just want to mention that I deliberately deleted the names of certain people mentioned in the letter, and the name of the firm of stores, because they are not relevant to the hearing and are not significant, and I think they had better be left out, Mr. Chairman.

Here we have a situation where Mr. Barca submits a letter to the department setting forth a great deal of information with respect to his qualifications as a fee appraiser.

I would like to have Mr. Constandy at this point read an affidavit, Mr. Chairman.

Mr. BLATNIK. Mr. Constandy.

Mr. CONSTANDY. The affidavit reads as follows:

Edward J. Burns, being duly sworn, deposes and says:

I reside at 179 Hawthorne Street, Malden, Mass.

I am engaged in the real estate business and have been making appraisals of real estate for the past 15 years. During that time, I have made appraisals for the department of public works in connection with real property taken for the construction of roadways.

On or about February 16, 1959, I was appointed as an outside appraiser or fee appraiser by the department of public works to make appraisals of five parcels of property located in Chelmsford, Mass., owned by Terence E. O'Rourke, Donald

J. Rafferty and Gertrude E. Rafferty, Paul R. Gaudette, and Astric M. Gaudette, Lena Scrizzi, and Hjalmar Johnson.

Shortly after I had completed making these appraisals, I was approached in a Chelmsford restaurant by Joseph Barca, who introduced himself and made known to me that he had been assigned as a fee appraiser by the department of public works to appraise the same five parcels in Chelmsford, which I have mentioned.

Barca told me that he was not experienced in making appraisals and also said that the Chelmsford parcels were the first appraisal assignments he had received from the department of public works. He asked me if I would assist him. I agreed to assist Barca in making his appraisals and went with him to the site of the five parcels, which were adjacent and similar properties.

During our visit we entered three of five houses located on the parcels. When we arrived in front of the parcel owned by the Raffertys I asked Barca what he thought the property was worth; Barca stated an amount (which I do not now recall) and I, in turn, gave Barca my appraisal figure and told him how I had arrived at my valuation. It took Barca about 1½ hours to make the five appraisals.

In order to further assist Barca in drafting his five appraisal reports I gave to him comparable sales and also gave to him copies of tracings of the five parcels I had made from a map in the city assessor's office.

Barca did not give me any money or anything of value for my assistance, nor did he offer or promise me anything. I would not have accepted anything from him had he offered it.

Since this incident I have met Barca only once and that meeting was a casual encounter during which we spoke together for about 2 minutes.

I have made this affidavit willingly and voluntarily at the request of James J. Fitzpatrick, who identified himself as being an associate counsel to the Special Subcommittee on the Federal-Aid Highway Program, House of Representatives, Washington, D.C.

This is subscribed to and sworn to before a notary. The date of that is December 5, 1961.

Mr. MAY. May we make that affidavit exhibit 25, Mr. Chairman?

Mr. BLATNIK. Without objection, it is so ordered.

(The document referred to was marked for identification and received as "Exhibit No. 25" and is retained in subcommittee files.)

Mr. MAY. Mr. Chairman, now we shall see Mr. Barca wrote a letter setting forth in great detail his specifications, and now we have an affidavit from Mr. Burns stating how Mr. Barca made his initial appraisals, and as Mr. Barca pointed out to Mr. Burns, he was not qualified.

Mr. Kopecky, how much did Mr. Barca receive from the Commonwealth for doing those five appraisals?

Mr. KOPECKY. He received a total of \$500, and was assigned these five properties on February 16, 1959—this assignment letter was signed by Mr. Fred Dole—he was paid the \$500 by check on May 7, 1959.

Mr. MAY. Mr. Burns pointed out that it took Mr. Barca about 1½ hours to make the five appraisals. Of course, Mr. Barca then had to assemble the data and make up the reports, so it could have taken him all day. For that he received \$500.

Mr. BLATNIK. Our first witness, or next witness, is Mr. Everett B. Lonzo of Fitchburg, Mass. Mr. Lonzo, will you take the witness stand? Will you please raise your right hand?

Do you solemnly swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LONZO. I do.

Mr. BLATNIK. Please be seated.

For the record, Mr. Lonzo, give your full name to the reporter, so that the committee may hear it, and your home residence and office address.

TESTIMONY OF EVERETT B. LONZO, FITCHBURG, MASS., REALTOR

Mr. LONZO. My name is Everett B. Lonzo. I reside at 7½ Lunenburg Street, Fitchburg, Mass.

Mr. BLATNIK. What is your office address?

Mr. LONZO. My office is at 280 Main Street, for the past 23 years.

Mr. BLATNIK. Fitchburg?

Mr. LONZO. Fitchburg, Mass.

Mr. BLATNIK. And what is your position, Mr. Lonzo?

Mr. LONZO. My business is real estate and insurance. I am a partner. My son and I are partners. I sell real estate and he tries to get the insurance on it. We work together.

Mr. BLATNIK. Mr. May.

Mr. MAY. Before we begin, Mr. Chairman, I would like to say also that we and the staff have received the utmost cooperation throughout from Mr. Lonzo.

Mr. Lonzo, before we begin, it is not particularly unusual for competent, honest appraisers to seek the help of other competent, honest appraisers at times in the course of their business. Is that right?

Mr. LONZO. That is correct. I help others.

Mr. MAY. And you have from time to time helped other appraisers. Is that true?

Mr. LONZO. That's right. I have.

Mr. MAY. In the course of their work?

Mr. LONZO. Yes, sir.

Mr. MAY. Were you born in Fitchburg?

Mr. LONZO. Yes, I was.

Mr. MAY. And you have lived there for better than 60 years?

Mr. LONZO. Sixty years ago.

Mr. MAY. And you have served as a real estate broker and appraiser for how long?

Mr. LONZO. Twenty-three years.

Mr. MAY. Are you a member of associations connected with or associated with the real estate appraising business?

Mr. LONZO. Yes. The National Association of Real Estate Boards. I am a charter member of the North Worcester County Board of Realtors and have made many appraisals for the banks. We have periods where they are settling estates in the trust departments, and I set a value on them and dispose of the properties. I have done more than 400 appraisals for local banks, many of them on GI appraisals, since 1945.

Mr. MAY. You have made appraisals for banks?

Mr. LONZO. Yes. Banks call on me many times to make an appraisal on estates where some bank is named as trust officer, in the trust department, and they have asked me to set the fair market value and then dispose of the property, so that the estate may be settled; and I have appraised for many lawyers that way. I have done at least six in the last 2 weeks.

Mr. MAY. Have you also made appraisals for the city of Fitchburg?

Mr. LONZO. Yes, I have made appraisals for the city of Fitchburg where they have taken property by eminent domain to make parking areas. I have appraised only for the city. I have appraised properties that the State was taking, the towns were taking, and also cities were taking, but I have always been on the other side of the fence for the people whose properties were being taken. I have only once been for the city on different properties taken for them.

Mr. MAY. Have you also made appraisals for the Veterans' Administration?

Mr. LONZO. Yes, I have.

Mr. MAY. Have you taken any courses in appraising?

Mr. LONZO. Yes. May I refresh my memory on some of the things here. I attended a course at the Massachusetts University, an extension course in real estate practice and appraising.

Mr. MAY. Have you testified in superior court?

Mr. LONZO. Yes, I have on many—I have testified in superior court on many eminent domain land-taking cases, but as I say, I have never appeared for a city, State, or county, but I have always been testifying against them for the people whose lands were taken.

Mr. MAY. Have you ever done any appraisal work directly for the Commonwealth of Massachusetts?

Mr. LONZO. No, I haven't done any appraisal work for the Commonwealth of Massachusetts.

Mr. MAY. Have you ever done any appraisal work for the department of public works?

Mr. LONZO. No, sir; I haven't.

Mr. MAY. Some time during the winter of 1959-60, were you contacted by Mr. Joseph Barca?

Mr. LONZO. Yes, sir; I was.

Mr. MAY. What took place at that time?

Mr. LONZO. Mr. Barca called me from Boston at my office and made an appointment to see me relative to assisting him in some appraisals that he had. I was to—

Mr. MAY. Was Mr. Barca known to you at that time?

Mr. LONZO. No, I had never met Mr. Barca before.

Mr. MAY. Did Mr. Barca come out to see you?

Mr. LONZO. Mr. Barca came up by auto and he told me he had some appraisals, State appraisals, to make; and he asked me if I would help him to assemble the data. I was not to have anything to do with setting the price, or determining the price, or fixing the value of the property.

Mr. MAY. Did Mr. Barca mention to you that these appraisals were for the department of public works?

Mr. LONZO. That's right. And he said they were in my area in Gardner and nearby, so that it would be helpful, as I could get comparables, and I could get the description of the property, and I could assist him with everything but the determining of the value and fixing the value. He did that.

Mr. MAY. Did Mr. Barca indicate that if these appraisals had been in the Boston area, he would have done them himself?

Mr. LONZO. He said his office was in Boston and he did appraisals down that way. He took care of them himself down that way.

Mr. MAY. Did he state he was not familiar with the Fitchburg-Gardner area?

Mr. LONZO. That's right. He felt I was in a position, as I was more familiar with it, to be of help to him there, and not make the appraisals, but get the background and data.

Mr. MAY. What sort of data did Mr. Barca want you to assemble or obtain?

Mr. LONZO. To get the record straight, I'll tell you what I did. I got photos. In some cases he also demanded photos. I got comparables. He gave me some comparables also. I made a sketch of the property location, such as Summer Street and Winter Street, and the properties located at such a place, and that's about as clear as I can make it. Some I made a sketch of the property and then he gave me some assessments, and I got some assessments he didn't give me.

I typed the appraisal completely. I typed the entire appraisal through my office, and I assembled the data, and I also made a description of the property for it.

Mr. MAY. So these are the things Mr. Barca indicated he wanted you to do, but he made it very clear to you you were not to establish values on the property, but he would furnish value information to you?

Mr. LONZO. That's right.

Mr. MAY. He would establish value?

Mr. LONZO. Yes.

Mr. MAY. Was it understood that if these cases went to court you would not testify?

Mr. LONZO. No, I would have nothing to do with it, but he would go to court and back it up.

Mr. MAY. So these would be Mr. Barca's appraisals and not yours?

Mr. LONZO. Mr. Barca signed the appraisals. I was just assembling the data. It was his appraisals—his stationery and his appraisals.

Mr. MAY. So these were the things Mr. Barca wanted you to do? Did you agree to do those things?

Mr. LONZO. I did agree to do those things, and I did them.

Mr. MAY. Was any fee established as of that time?

Mr. LONZO. Yes. I was to be paid on the smaller ones from \$75 to \$100. The city of Fitchburg paid me \$100, and they averaged around \$75 apiece.

Mr. MAY. How would Mr. Barca establish a fee on something that was a little bit more than the ordinary house?

Mr. LONZO. If there was quite a lot of work to it, why, I would get \$100.

Mr. MAY. On how many appraisals did you assist Mr. Barca?

Mr. LONZO. I would say about 27 or 28.

Mr. MAY. We have reviewed this with you, Mr. Lonzo. I have 16 in Gardner, 5 in Lowell and 6 in Lynnfield. Is that right?

Mr. LONZO. Yes. That's right. Gardner was the first ones.

Mr. MAY. Do you know how much money Mr. Barca paid you for assisting him in these appraisals?

Mr. LONZO. So far he had paid for those appraisals—he paid me \$2,000 at different times. The appraisals came in twos and threes, and like that, like parcel 2, 3, and 4, and I would get paid. It was some time before he would get paid, and when he would get paid he would pay me for those two or three appraisals.

Mr. MAY. \$2,000. Does he still owe you some money?

Mr. LONZO. Yes, \$250.

Mr. MAY. He owes you \$250?

Mr. LONZO. He has not been paid for that. It is not that he does not plan to pay me, but he has not been paid for it.

Mr. MAY. Mr. Kopecky, do we have some idea of what the Commonwealth paid Mr. Barca for doing these appraisals?

Mr. KOPECKY. Yes. For these 22 appraisals plus 6 others, since there was a lump figure involved in some of them, Mr. Barca was paid \$6,600 by the State in 1960.

Mr. MAY. There came a time, Mr. Lonzo, when Mr. Barca paid you some money in cash?

Mr. LONZO. Only once.

Mr. MAY. How did that come about?

Mr. LONZO. He called me one morning, I guess at the office, and said there were two appraisals they were in a hurry for that we had completed, and he said he would come to the office and would look them over and see they were all right and sign them. And these two were completed and they were in a hurry for them, and rather than him come from Boston to get them, if I would run them down to him, which I did.

Mr. MAY. How far from Boston is Fitchburg?

Mr. LONZO. About 48 miles; 45 to 48 miles. So he asked me to bring them down. He said he was going to try to collect then for some appraisals that were due him and he would pay me when I got there, but when I got there he didn't, so he gave me a \$100 bill, and it was the only time he ever gave me cash.

Mr. MAY. He gave you a \$100 bill?

Mr. LONZO. That's right. At other times he paid me by check.

Mr. MAY. Where did you bring the appraisals when you went to Boston to meet Mr. Barca?

Mr. LONZO. I met Mr. Barca, I think, at the Boston Club, a place where he was a member. He was waiting for me. And from there we took them to some State office. I'm not sure just where it was. And he delivered them to this man that was supposed to look at them. It was a State office in Boston, I thought on Beacon Street, but maybe I'm wrong.

Mr. MAY. So you rushed the two appraisal reports to Mr. Barca?

Mr. LONZO. Yes, and I gave it to Mr. Barca so he could get them in there. They were in a hurry to get them.

Mr. MAY. Will you describe what routine you and Mr. Barca went through on a normal property?

Mr. LONZO. Yes. We usually did about two or three. We would visit two or three places, and sometimes four, but mostly three. We would go to—Mr. Barca would pick me up, for instance, if we were in Gardner—we would go to Gardner and we would go to this parcel, or the owner of this parcel. Mr. Barca would identify himself and introduce himself. He would introduce me as his assistant. So Mr. Barca and I would inspect the property and I would take down notes that I would need for my description of the properties, such as the type of heat, and the walls, and the rooms, and wood frame or plaster, or whatever it was. There was quite a lot in the description and he went through every property with me. The type of foundation. That was my job, and practically everything but determining the value.

Mr. MAY. After that first visit to the property, would you normally return to the property and go about your work in gathering this information?

Mr. LONZO. Yes. Usually you can't get enough information in three places in 1 day. So I usually came the next day, or as soon as I could after that, and I would come up alone and do the work that was necessary in order to get a good description of the property, and also get a sketch. I don't happen to be a draftsman, but I guess I can get by.

Mr. MAY. After you gathered together the data that you were supposed to obtain, you would then wait for Mr. Barca to supply you with the valuation figures. Is that right?

Mr. LONZO. Yes. Mr. Barca came to my office, and he would bring me his paper with his valuation that he had determined on the property, and sometimes, usually a justification for it, and then I would put it together. I would not make the appraisal. I would type it out.

He also brought me his stationery and brochures, and everything worked out that way.

Mr. MAY. Sometimes Mr. Barca would furnish you with the legal description?

Mr. LONZO. Yes. Always with the legal descriptions. I had never had access to that. He always brought that.

Mr. MAY. In what form would that be where Mr. Barca brought it to you?

Mr. LONZO. That was typed on one sheet of paper.

Mr. MAY. What color paper?

Mr. LONZO. Brown. I think it was brown paper, usually. The legal documents. That's right.

Mr. MAY. They would be typed?

Mr. LONZO. They would be what?

Mr. MAY. Typed?

Mr. LONZO. Oh, yes.

Mr. MAY. Typewritten?

Mr. LONZO. That's right.

Mr. MAY. In what form did Mr. Barca supply you with the valuation figures?

Mr. LONZO. They would be in longhand. They would be written.

Mr. MAY. What color paper?

Mr. LONZO. Usually on white paper.

Mr. MAY. They would be written?

Mr. LONZO. It was white paper, as far as I remember it—white paper.

Mr. MAY. Was that ever typed?

Mr. LONZO. No.

Mr. MAY. Always in longhand?

Mr. LONZO. That's right. I never saw any typed paper with valuations on it.

Mr. MAY. What would be contained on that? That would be normally one sheet of paper?

Mr. LONZO. That's right.

Mr. MAY. What would be contained on that sheet of paper?

Mr. LONZO. Well, it would be usually—I tried to remember. It was to Mr. Dole in some cases.

At your request I made an appraisal on the following parcels—
and it would give the numbers of the parcels—
and herewith is my findings.

It would go on :

Before the taking the value of the property was so much. After the taking it was so much.

The difference was the damage to the property.

MR. MAY. In other words, did this one sheet of paper—on that one sheet of paper would be figures and computations and at the bottom would be the total amount of damage?

MR. LONZO. That's right. The total amount of damage. In cases where they took all of that property, of course, there would be no before and after.

MR. MAY. Mr. Barca always delivered that sheet of paper to you in person?

MR. LONZO. That's right. He did everything in person.

MR. MAY. Mr. Lonzo, did you ever receive a department of public works appraisal form?

MR. LONZO. No, I never did receive one. Mr. Barca showed me two he had done in another place. Chelmsford, I think it was. And they were very good looking. And he said he was showing them to me so that I would have an idea of the kind of appraisal he likes, which was a good-looking appraisal.

MR. MAY. Staying with the computation sheet that Mr. Barca supplied to you on each of these parcels, this sheet was not a department of public works sheet of paper?

MR. LONZO. Oh, no. No, it was not.

MR. MAY. A plain sheet of paper with figures on it?

MR. LONZO. That's right.

MR. MAY. And after you had received this sheet which contained the computations and the final damage figure, then you would assemble the so-called data in an appraisal report?

MR. LONZO. That's right.

MR. MAY. If Mr. Barca supplies you with a valuation figure of, let's say, to use an example, \$12,000.

MR. LONZO. Yes.

MR. MAY. Now you have to include in your report certain comparables. Where would you get the comparables to put in the report to justify the \$12,000?

MR. LONZO. Well, we get comparables not for one particular place. We get all of the comparables we can. In fact, I have a file in my office with comparables in the event I do get appraisals, which I get quite often, and where I look up the comparables that will fit that.

For instance, if there was some property sold for, as you say this was, \$12,000, and there was property sold for 11, or 13, or around that, we get those and use those for comparables.

MR. MAY. We have seen your file cards in your office, Mr. Lonzo. You have available to you in your office most of the sales that have taken place over most all areas of Fitchburg.

MR. LONZO. That's right. But sometimes I do have to call—I do call appraisers I know and ask them if they have certain comparables, which helps me quite a lot. We will do that.

Mr. MAY. But the significant point here is, after Mr. Barca established the value then you would search for the comparables to justify that.

Mr. LONZO. That's right.

Mr. MAY. Did Mr. Barca complain to you occasionally about the lack of number of pages in your appraisal report?

Mr. LONZO. The ones he showed me from Chelmsford were more pages than the ones I was making. He said we should give them a good, complete appraisal, and it should be larger and make it more detailed, so it showed up a little bit more.

Mr. MAY. What Mr. Barca was searching for was a thicker appraisal?

Mr. LONZO. That's right. A larger appraisal. Yes. Many appraisers make appraisals and they are 12 or 15 or 20 pages, and I think ours was about 12 or 13.

Mr. MAY. You mentioned to us that Mr. Barca continued to say he wanted to balloon up the appraisal.

Mr. LONZO. That's right.

Mr. MAY. He wanted more data?

Mr. LONZO. More data.

Mr. MAY. Even though it was extraneous material, Mr. Lonzo. Is that right?

Mr. LONZO. On my own I make them as briefly as I can, so that is where I was leading to. Usually mine are 12, but Mr. Barca wanted more. More information.

Mr. MAY. More data and thicker reports?

Mr. LONZO. Well, different appraisals. He wanted different appraisals.

Mr. MAY. You mentioned Mr. Barca showed you certain old appraisals made by other people?

Mr. LONZO. Yes, but they had no bearing on State roads. Nothing like that.

Mr. MAY. No. He would give you an idea of what he wanted?

Mr. LONZO. No, there were some with 20 pages in them but in fact they were office buildings in Boston that had no bearing on this whatever. But he was just bringing out that and emphasizing he wanted a good, substantial appraisal, but larger than I was making.

Mr. MAY. I want the record to show clearly that what Mr. Barca was——

Mr. LONZO. Built up.

Mr. MAY. When you looked at the appraisal reports he gave you, based on your experience, they contained a lot of extraneous material that was not necessary.

Mr. LONZO. That is right.

Mr. MAY. Mr. Lonzo, we have this situation: When you would go out and do your work, you would gather together that information which would be necessary if he was going to arrive at the just and true value of the property, is that right? You would have that information. You would have the comparable sales in your office?

Mr. LONZO. Not always. I think there was a large one that I didn't have one and couldn't get one.

Mr. MAY. We will get to that one. But generally speaking, you would gather the pertinent information together?

Mr. LONZO. That is right.

Mr. MAY. Yet Mr. Barca from Boston would come out and give you a slip of paper, and on it would be the computations and the value as he saw it?

Mr. LONZO. That is right.

Mr. MAY. Of the damages?

Mr. LONZO. That is right.

Mr. MAY. Do you know where he got that information, Mr. Lonzo?

Mr. LONZO. No; I don't. I presume that he got it himself. He was an appraiser.

Mr. MAY. We will show where Mr. Barca obtained the information. One of the properties on which you helped Mr. Barca was the property belonging to William and Amelia Eskeli.

Mr. LONZO. That is right.

Mr. MAY. 443 West Broadway Gardens, do you remember that?

Mr. LONZO. Well, I don't remember the date. That is a couple of years ago.

Mr. MAY. Mr. Chairman, we have a copy of Mr. Barca's appraisal report, and this is page 8. This is the sheet showing the computations and the total damages. We also have a report of the same property, and this one is the departmental appraisal report.

I would ask Mr. Constandy to read a computation page of the State appraiser's report item by item.

Mr. CONSTANDY. Parcel 1-70.41 acres, parcel 1-RT-1TEMP. removal easement.

Mr. MAY. I would like to interrupt. I have Mr. Barca's sheet in front of me:

Parcel 1-70.41 acres—

next line:

Parcel 1-RT-TEMP. removal easement.

Mr. CONSTANDY. Next line:

Value before (total land area 20,958 square feet).

Mr. MAY. I will read Mr. Barca's:

Value before taking total land area 20,958 square feet.

Mr. CONSTANDY. Next line:

Residential land 8,958 square feet at 20 cents a square foot, \$1,790.

Mr. MAY. Mr. Barca says:

Residential land 8,958 square feet at 20 cents a square foot, \$1,790.

Mr. CONSTANDY. Next line:

House (depreciated value) \$5,400.

Mr. MAY. Mr. Barca has on the next line:

House (depreciated value) \$5,400.

Mr. CONSTANDY. Next line:

Barn and shed (depreciated value) \$1,660.

Mr. MAY. Mr. Barca has on the next line:

Barn and shed (depreciated value) \$1,660.

Mr. CONSTANDY. The next line:

Business land, 12,000 square feet at 50 cents a foot, \$6,000.

Mr. MAY. Mr. Barca has on the next line :

Business land, 12,000 square feet at 60 cents a square foot, \$7,200.

I would like to point out that for the first time Mr. Barca's report does not coincide with the State. The State uses 50 cents a square foot; Mr. Barca used 60 cents a square foot.

Also we note that in Mr. Barca's report originally it was typed 50 cents, and over the 5 was typed a 6, 60 cents.

Will you continue, Mr. Constandy?

Mr. CONSTANDY. Next line :

Paving, retaining wall, et cetera, \$1,500.

Mr. MAY. Mr. Barca has on that line :

Paving, retaining wall, et cetera, \$1,500.

Mr. CONSTANDY. The next line :

Building cap. val., \$25,300.

Mr. MAY. Mr. Barca has on that line :

Building (Cap. Val.) \$25,300.

Mr. CONSTANDY. The next line :

Total b. equals 45,650.

Mr. MAY. Barca has 42,850, a difference, Mr. Chairman, of \$2,800. The difference in Mr. Barca's stating 60 cents a square foot for the 12,000 square feet and the State saying 50 cents a square foot.

Anything else, Mr. Constandy?

Mr. CONSTANDY. Under that it has "Value after," and on the next line :

Land, 3,150 square foot nominal \$150—

and then :

Damages, \$41,500.

Mr. MAY. Mr. Barca has :

Value after taking—

next line—

land of 3,150 square feet nominal \$150, sum of damages, \$42,800.

I would like to point out, Mr. Chairman, that Mr. Barca subtracted \$150 from \$42,850 and came up with \$42,800. He made a mistake. It should be \$42,700, which would be just that difference of \$1,200.

The mistake is important. I would like to point out that the departmental appraisal was dated October 19, 1959, and Mr. Barca's appraisal was dated February 24, 1960.

Mr. Lonzo, when we discussed this with you, you pointed out that the data that we just read from that sheet was obtained by you from something furnished to you by Mr. Barca?

Mr. LONZO. That is right.

Mr. MAY. We have another problem. Mr. Lonzo, you assisted Mr. Barca on the property belonging to Adolph Jandris, 196 High Street in Gardner.

Mr. LONZO. That is right.

Mr. MAY. Do you remember that? We, in like fashion, Mr. Chairman, have a copy of Mr. Barca's report. I have in front of me page

10. Mr. Constandy has in front of him the departmental appraisal report on this property.

Before we begin, the departmental appraisal report is dated November 3, 1959, and Mr. Barca's appraisal is dated February 24, 1960. Mr. Constandy.

Mr. CONSTANDY (reading) :

Value before—

and the next line—

ESSO lease.

On the next line—

land 15,100 square feet at 50 cents a square foot, \$7,550.

The next line :

Paving 50 percent area at 20 cents a square foot, \$1,510.

Next line :

Bldg. (capitalized value) \$16,500.

The next line :

Total value ESSO lease, \$25,560.

Mr. MAY. I have Mr. Barca's report. It reads exactly the same. On one line is value before taking, the next line ESSO lease, the next line is land, 15,100 square feet at 50 cents a square foot, \$7,550.

The next line :

Paving 50 percent area, 20 cents a square foot, \$1,510.

The next line :

Building (capitalized value) \$16,500, total \$25,560.

Mr. CONSTANDY. The next line is :

Westchester lease—

and below it on the next line—

land, 51,700 square feet at 40 cents a square foot, \$20,680.

Mr. MAY. Mr. Barca's report reads exactly the same.

Mr. CONSTANDY (continuing) :

Building (capitalized value) \$30,680.

Mr. MAY. Mr. Barca's report is identical.

Mr. CONSTANDY. The next line :

Total value Westchester lease, \$51,480.

Mr. MAY. Mr. Barca's report is identical.

Mr. CONSTANDY. The next line :

Remaining land—

and beneath that on the next line—

Pleasant Street, 24,200 square feet at 20 cents a square foot, \$4,840.

Mr. MAY. Mr. Barca's is the same.

Mr. CONSTANDY (continuing) :

Rear land—

on the next line—

8,800 square feet at 5 cents a square foot, \$440.

Mr. MAY. Mr. Barca's is the same.

Mr. CONSTANDY (continuing) :

Total remaining land, \$5,280. Total value before, \$82,320.

Mr. MAY. Mr. Barca's is identical. [Reads:]

Total value \$5,280. Total value before taking, \$82,320.

Mr. Chairman, there is no sense in going on with this. Mr. Barca's figures and information are identical with the remainder of that page for the State, and down on the bottom he has :

Damages, \$36,480—

What is the State's?

Mr. CONSTANDY (reading) :

(Damages, \$36,480—

and the line below that—

Total, \$36,500.

Mr. MAY. Mr. Barca says the total is \$36,500.

Mr. CONSTANDY (continuing) :

Salvage value of gas station, \$1,800.

Mr. MAY. Mr. Barca's report has identically the same information. Salvage value of gas station is \$1,800, and that is peculiar, Mr. Chairman, and it is unusual for the fee appraisers to make such notations on their reports.

Mr. CRAMER. May I ask a question, Mr. Chairman? Counsel, did it become obvious to anyone examining the outside appraisal and the State appraisal that they were identical?

Mr. MAY. Yes, sir.

Mr. CRAMER. Wouldn't it be obvious for anyone anywhere up the line examining these, including the review board and including whoever approved them on behalf of the State? It looks like from this one docket, on Docket 48-B, Spagnoletti, the two you just went over—shouldn't it be obvious to those examining it that the person making the appraisal had improper access to the files?

Mr. MAY. Yes, sir. I might point out that after a period it did become apparent to the review board that Mr. Barca was copying the departmental appraisal reports. He brought it to the attention of Mr. Dole, and after that Mr. Barca received no additional appraisal work.

However, all of the reports submitted by Mr. Barca were furnished to the review board, and the review board had those reports to consider when they were establishing the true value of these properties.

Mr. CRAMER. Were they part of the basis for the board's consideration, after they had knowledge that they were copied?

Mr. MAY. I don't know that.

Mr. CRAMER. Was Mr. Barca paid any appraisal fees following this disclosure?

Mr. MAY. By the time they learned of it, Congressman, it is my understanding that Mr. Barca was not paid.

Mr. Lonzo has testified that Mr. Barca owes him \$250. There is still some appraisal work which Mr. Barca did for the Commonwealth, for which he has not been paid.

As further proof of the copying of the departmental appraisal, we have another property, Wiljo Hamalainen, 230 Summer Street, Gardner. Mr. Constandy, would you read just the notation of the departmental report at the bottom of its computation page?

MR. CONSTANDY. Yes. First is the note "Salvage value, \$1,500," and then:

NOTE.—At time of construction of Pearson Boulevard County Highway (1953), the dwelling was relocated and placed on its present foundation by the previous owner. The dwelling was modernized at that time.

MR. MAY. It is interesting, Mr. Chairman, that Mr. Barca's report reads:

Salvage value, \$1,500. NOTE.—The dwelling was relocated and placed on its present foundation; by the previous owner. At the time of construction of Pearson Boulevard a county highway. At that time the building was modernized.

Here is an obvious attempt, Mr. Chairman, to use the same information, the same words, but rearranged, and as a result we have one sentence that has no verb. It makes no sense at all.

MR. CRAMER. He made a \$150 error, and the only time he tried to compute the figures he also made an error in rearranging the sentence.

MR. MAY. We have even more grievous errors. We will do one more property, Mr. Chairman, Bertha David and Philip Levine, 270 Tanner Street, Lowell.

This taking involved 12 separate parcels, and the departmental appraisal report contained 10 separate parcels, and then another appraisal report contained 2 parcels.

But Mr. Barca's report combines those two appraisal reports, so he has all the information, the computations from the two departmental appraisal reports in his one. Now, we might speed this up somewhat. Mr. Constandy, will you read the departmental report where it pertains to value before?

MR. CONSTANDY (reading):

Parcel 3—190.27 acres or 11,070 square feet, 15 cents a square foot, \$17,000.

MR. MAY. Mr. Barca has the same information.

MR. CONSTANDY (reading):

Parcel 3—20.40 acres for 17,160 square feet at 15 cents a square foot, \$2,600.

MR. MAY. Mr. Barca has \$2,600, the same information.

MR. CONSTANDY (reading):

Parcel 3-31—1.06 acres or 17,160 square feet at 15 cents a square foot (.40 of an acre), \$2,600.

MR. MAY. Mr. Barca has \$2,600.

MR. CONSTANDY (reading):

28,750 square feet at 0.03 cents per foot (.66 of an acre), \$860.

MR. MAY. Mr. Barca has the same, \$860.

MR. CONSTANDY (reading):

Parcel 3-27—18,000 square feet at 30 cents a square foot, \$5,400.

MR. MAY. Mr. Barca has the same, \$5,400.

MR. CONSTANDY (reading):

One and one half STY. WD. Storage buildings 1,144 square feet at \$4.49 a square foot, \$6,500, depreciation 60 percent, \$2,800.

Mr. MAY. Mr. Barca has the same, \$2,800. I will continue, Mr. Chairman. There are many items. They fall exactly in Mr. Barca's report as they did in this State report. It goes on values \$130, \$4,000, \$160, \$780, \$72,000, \$2,300, \$6,700, and then he reaches a point where his report differs from the departmental report, \$900.

But when you look at the first departmental report for that particular parcel, it says \$900. Next Mr. Barca points out, as does the departmental report, one large iron cutting shears, \$5,200, 80-percent depreciation, \$1,040.

The next line:

One small iron cutting shears, \$2,800, 80 percent, \$560.

But when we reach the next page of Mr. Barca's report he makes a mistake. He includes those two items again, \$1,040 for the large iron cutting shears and \$560 for a small shears. What does the State have, Mr. Constandy, with respect to the value before?

Mr. CONSTANDY. The State appraisal reads:

Value before, \$156,460.

Mr. MAY. Mr. Barca's report has for the value before the figure of \$158,960. But if we take the State's figure of \$156,460 and add \$900, which was contained in other departmental reports, and also add the large cutting shears, \$1,040 that Mr. Barca included twice, also add the small cutting shears, \$560 which he included twice, we come up with the value of \$158,960.

If you subtract those three items, you will have exactly what the State has, \$156,460.

Even more serious is Mr. Barca's value after. Despite the fact that he incorporated both the departmental appraisal reports in the before value, despite the fact that he made errors and increased that value, his value is exactly the same as the departmental report. It contains some 18 items set forth in the identical manner with the same figures. The value after as set forth by Mr. Barca was \$117,658. What does the departmental report say, Mr. Constandy?

Mr. CONSTANDY. \$117,650.

Mr. MAY. I would like to point out, Mr. Chairman, that Mr. Barca added a row of zeros and came up with 8, another small error on the part of Mr. Barca. Mr. Barca's report is identical to the State's, with the exception of the errors which he made. There was another error.

Mr. CRAMER. It would be quite obvious, wouldn't it, Counsel, to anyone checking this appraisal that it had to be copied, that the information had to come from the department?

Mr. MAY. There is no question, Mr. Congressman.

Mr. CRAMER. And this one was approved by—

Mr. MAY. I think you will find all of these were approved by Mr. Orlando Q. Spagnoletti.

Mr. CRAMER. This was appraised by Mr. Riley and approved by Mr. Stephen.

Mr. MAY. As conclusive proof that these were obtained from the departmental report, on the Adolph Jandris property the State set forth certain figures under the caption "Expense" when it was justifying the capitalized value of a particular building. Would you read what the State had to say under that item, Mr. Constandy?

MR. CONSTANDY. Yes. [Reading:]

Expenses CM 5 percent 142, REP. 5 percent 142 INS. 60, taxes on land 35, INC. on land 453.

Beneath that it has in parentheses "(6 percent)," a total of \$832 expenses.

MR. MAY. As proof positive, Mr. Chairman, Mr. Barca's report has set forth identically for the most part. He says expenses, and like the State it says "CM 5 percent 142." That means care and maintenance 5 percent, \$142. He is listing the expenses. Under that "REP"—repairs—"5 percent, \$142." Under that "INS"—insurance—"60." Under that "Tax on land"—exactly like the State—"35."

But here he made a mistake. He says, "INS on hand"—it looks like insurance on hand, which makes no sense at all. Somebody misread what the State had put down there. It should be income on land, and the figure set forth beside that is \$457. The State was \$453. The State's 3 is kind of blurred, and somebody misread it. Now, if you administer Barca's 457 to the remainder of the column of expenses, you would come out with \$836. Mr. Barca does not. He has \$832, which is exactly what the State had.

Did you know anything about this, Mr. Lonzo?

MR. LONZO. No.

MR. MAY. Mr. Barca never mentioned to you where he was getting the information?

MR. LONZO. No, he didn't.

MR. MAY. We on the staff reviewed other reports submitted by Mr. Barca, and it shows that in addition to the 4 we have already mentioned, in another 16 reports, computations and values had obviously been obtained from the departmental appraisal report.

Now, one of Mr. Barca's appraisal reports which was apparently not copied from the departmental report that is worthy of interest, and that is the Deb Realty Trust taking. Is that in Gardner, Mr. Lonzo?

MR. LONZO. That is right, yes.

MR. MAY. What happened in connection with that property? Did you and Mr. Barca visit the property together?

MR. LONZO. Yes, we did. I think we went up there twice together. It is quite a big property. There is a warehouse and they have these big metal cutting shears and scales, large scales.

MR. MAY. What type of business?

MR. LONZO. A junk business.

MR. MAY. A junk business?

MR. LONZO. Or a metal business.

MR. MAY. So it consists of a junk yard?

MR. LONZO. That is right.

MR. MAY. Which was used for the storage and processing?

MR. LONZO. That is right.

MR. MAY. Of scrap metals?

MR. LONZO. Quite a lot of machinery, big machinery.

MR. MAY. And you and Mr. Barca—did you talk with the owner there, Mr. Lonzo?

MR. LONZO. Yes. We were there. Mr. Barca did the talking at all times with the owners of the property. I was just taking down data. The owner did give us the cost of some of the big machinery which I put down and made notes of.

Mr. MAY. You made notes of the machinery involved?

Mr. LONZO. Yes.

Mr. MAY. And the original cost?

Mr. LONZO. That is right, yes.

Mr. MAY. That machinery then would have to be depreciated?

Mr. LONZO. That is right, it would have to be depreciated.

Mr. MAY. How was that done?

Mr. LONZO. I don't know. Mr. Barca did that. I just took down the notes—I don't know. Deb Realty—I don't know the name. There was one man that appeared to be the head, the owner.

Mr. MAY. Later after visits to the Deb property Mr. Barca gave you the figures on the depreciation value?

Mr. LONZO. That is right, yes.

Mr. MAY. Of the machinery. Now, in that appraisal report one comparable was shown. Did you obtain that comparable, Mr. Lonzo?

Mr. LONZO. I didn't have any comparables on that property. It was quite a big property, and Mr. Barca gave me that comparable. I think it was a large filling in or something. I don't know too much about it. I know that was one of those that he gave me.

Mr. MAY. You eventually assembled that report?

Mr. LONZO. That is right.

Mr. MAY. From the data that you obtained plus the computation data?

Mr. LONZO. That is right, yes.

Mr. MAY. And the depreciated value supplied to you by Mr. Barca plus the comparable sales he furnished?

Mr. LONZO. Yes.

Mr. MAY. Do you recall what the value of damages was as they were shown in that report when it left your hands?

Mr. LONZO. I don't remember too much now, but I think it was in the vicinity of 160, something like that, \$160,000, right in that vicinity.

Mr. MAY. \$160,000?

Mr. LONZO. I am not swearing, but I believe that is what it was.

Mr. MAY. You are sure it was less than \$200,000?

Mr. LONZO. No, it wasn't \$200,000.

Mr. MAY. It was not \$200,000?

Mr. LONZO. That is right.

Mr. MAY. It was less than \$200,000?

Mr. LONZO. Yes.

Mr. MAY. What would you think of a figure around \$160,000, based on your experience?

Mr. LONZO. I didn't do any figuring at all. On some of these one-family houses, if there had been a high valuation put on it, I would know this and I might make some remark, but on any as big as that, there was so much to take into consideration that I didn't make any appraisal determining the value.

Mr. MAY. Did the range of \$160,000 seem reasonable to you, a little high or a little low?

Mr. LONZO. If I would make the appraisal I would go into it deeper, but I thought around that would be about right. But if I was going to be expected to go to court, if there was a court case I would go into it pretty deep. I didn't agree to go into court and back it up.

Mr. CRAMER. Did you understand then, working with Mr. Barca, that if these matters went to condemnation, that you would be called upon to be a witness?

Mr. LONZO. No, sir, I was not. That was an understanding, that I was not determining official value on that property. I was not determining or fixing the value. He was signing it. He was making the——

Mr. CRAMER. Then Mr. Barca would be the witness, is that right?

Mr. LONZO. That is right. He would go to the court and back it up.

Mr. CRAMER. How could he testify to all of the knowledge you had? How could he testify to it?

Mr. SCHERER. It is obvious in these cases Barca was pretty sure he would never have to go to court.

Mr. CRAMER. Did any of these cases go to court?

Mr. MAY. The Deb Realty case we are discussing now is a pending matter now.

Mr. CRAMER. What is the status of it?

Mr. MAY. I don't know. It has gone to the attorney general's office. Is it set down for trial, Mr. Lyons?

Mr. LYONS. Not yet.

Mr. SCHERER. Significantly only one of them has reached the stage of litigation, and I will bet my bottom dollar that it has only reached the stage of litigation because of these investigations.

Mr. MAY. I think for the most part, Mr. Lonzo—you correct me if I am wrong—these were residential properties for the most part?

Mr. LONZO. Mostly one-family houses in the vicinity of \$11,000 or \$12,000. They are nearly all 40 or 50 years old. There is only a few large ones.

Mr. MAY. I don't believe it is the usual case where the ordinary homeowner takes his case to court.

Mr. LONZO. No, not usually.

Mr. MAY. Mr. Lonzo, would you be interested to know that when the Deb Realty report was finally submitted by Mr. Barca to the department of public works, it was not the figure that you thought it was, \$160,000, but \$247,800?

Mr. LONZO. I didn't remember it was that high. I didn't set a value or determine a value, but I didn't expect it to be——

Mr. MAY. I just wanted to point out that when it left your hands, according to your recollection it was around \$160,000. By the time it reached the department, it was \$247,800.

Mr. LONZO. I have no record of costs of any of those appraisals. I made one copy for Mr. Barca, and he wanted one for his own files, and the only record I kept was the date that he paid me and the amount he paid me.

Mr. SCHERER. May I ask a question. In reference to this present case under consideration, as counsel pointed out to you when it left your hands it had an appraisal on it of \$160,000.

Mr. LONZO. I believe it did. I am not sure, Mr. Congressman.

Mr. SCHERER. Counsel said it had an appraisal of about \$160,000.

Mr. MAY. Mr. Lonzo's recollection is \$160,000. He is not sure of \$160,000. He is sure it was less than \$200,000.

Mr. SCHERER. All right. Now as counsel said, when it finally reached where——

Mr. MAY. The department of public works.

Mr. SCHERER. It reached the department of public works, it had a figure on it, an appraisal of \$247,000. How could the data that you supplied for this appraisal substantiate the larger figure of \$247,000?

Mr. LONZO. I don't know that it could.

Mr. SCHERER. It couldn't as a matter of fact, could it?

Mr. LONZO. I don't see how it could.

Mr. SCHERER. If you got the data to support the appraisal of \$160,000, it certainly wouldn't support an appraisal of \$247,000, would it, sir?

Mr. LONZO. No, but as I said, I did not figure out, determine the value. I did not figure all that out. Only I figured it would be in the vicinity of that.

Mr. SCHERER. But to me it seems that necessarily there must be some relationship between the information that you furnished to support an appraisal, must there not, and the actual appraisal figure?

Mr. LONZO. Yes. I gave them the description and the cost when new, like that. Then it was in his hands to set the price, the value.

Mr. SCHERER. I understand that, but you furnished the comparable sales, didn't you?

Mr. LONZO. No, I didn't furnish the comparable sales on that. That is one that he furnished.

Mr. SCHERER. Usually he furnished the comparable sales?

Mr. LONZO. Yes, I did on most of the homes.

Mr. SCHERER. In this particular case, what did you furnish in this report?

Mr. LONZO. I didn't furnish any comparable.

Mr. SCHERER. What did you furnish to support this appraisal, this figure?

Mr. LONZO. He gave me some photos. I had some photos. I made a sketch of the property and I typed a description of the property, and then I assembled the data. That was the job that he was paying me for.

Mr. SCHERER. I can see in this case where the little amount of work that you did was necessarily needed to support the appraisal, but in most instances didn't the data that you furnished, the comparable sales, have to bear some relationship at least to the final figure that he arrived at?

Mr. LONZO. He had one comparable sale.

Mr. MAY. Mr. Congressman, we had some information on that one comparable sale that may be helpful.

Mr. CRAMER. Would the gentleman yield? How long have you been in the appraisal business?

Mr. LONZO. Twenty years, twenty-three years.

Mr. CRAMER. How does it work that an appraiser associates another appraiser, and the other appraiser gathers the information, and the appraiser that has the contract then fixes his own values, and he can relate it to what you gave him, or he can't relate it to what you gave him? How does this operation work? Who appears in court?

Mr. LONZO. The one that is designated as the appraiser, the one that is hired by the State to make the appraisal.

Mr. CRAMER. How could he do it if he didn't get the background information, if he isn't familiar with the property, if he hasn't seen it and hasn't gotten all his comparables and everything together himself? How can he testify to it except from your information?

Mr. LONZO. That I don't know.

Mr. CRAMER. He obviously could not have.

Mr. LONZO. I have made several hundred appraisals, but I have always made my own.

Mr. CRAMER. And that should be the procedure, don't you think? How else are you going to testify in court if you aren't familiar with all the facts?

Mr. LONZO. That is why I make my own appraisal. But I have helped other people, only two people. One of them besides Mr. Barca.

Mr. SCHERER. But you helped in those cases where you first furnished basic information, and then the person that made the actual appraisal used the information that you gave him to arrive at a figure, but as I understand in all of these cases, the appraisal, the actual appraisal figure or amount was already decided upon, and you merely gave him filler; isn't that what you did?

Mr. CRAMER. The boiler plate.

Mr. LONZO. He gave me the value, gave me the determined value that he had fixed on the property.

Mr. SCHERER. Sure.

Mr. LONZO. After he had reviewed the data that I had given.

Mr. CRAMER. The department of public works files, after he reviewed those he gave you the figures?

Mr. LONZO. I didn't give him those.

Mr. CRAMER. I didn't say you did. That is where he got his figures.

Mr. LONZO. I gave him photographs of the property and a description.

Mr. CRAMER. But how could a man come up with a final value on property and hand it to you and say, "Now you justify this"? Now, what kind of an appraisal is that?

Mr. LONZO. He never asked me to justify anything, Mr. Congressman. He went through the property with me at the time we went through the property.

Mr. CRAMER. And then he handed you a figure?

Mr. LONZO. Not then. Sometimes it was 2 weeks later. When he was going through the property with me, he had a chance to see what there was, and he had an appraisal book also that he sometimes made notes from.

Mr. CRAMER. So he picked a figure off the top of his head and he handed it to you, and then you are the one that has to go justify that figure.

Mr. LONZO. I assembled the data and the appraisal.

Mr. CRAMER. Justified—

Mr. LONZO. No, I don't justify any figure he gives me, sir.

Mr. CRAMER. That is what he used to justify the figure?

Mr. LONZO. That is right, but I don't justify anything.

Mr. CRAMER. And he looked for comparables, went to the file and tried to find figures similar to the ones he gave you, right? That is what you testified to?

Mr. LONZO. Yes, on the dwellings, that is right, but not on this one because this one here I didn't have the comparables. I didn't have any comparables that would be suitable for that property.

Mr. SCHERER. But the data that you furnished him had to bear some relationship to the appraisal figure?

Mr. LONZO. That is right.

Mr. SCHERER. To the figure that he previously arrived at, the appraisal that he had already made before he got you to give him the supporting data.

Mr. LONZO. He gave it to me afterward, sir.

Mr. SCHERER. That isn't what I understood your testimony to be at this point.

Mr. LONZO. He gave me the value that he had determined, and then I put everything together.

Mr. CRAMER. That is right, that is what Mr. Scherer just said.

Mr. LONZO. I misunderstood.

Mr. CRAMER. And that is what you testified.

Mr. LONZO. That is right.

Mr. CRAMER. You got the figure and then you went and got the information?

Mr. LONZO. That is right. I couldn't complete the appraisal until I had his figures.

Mr. CRAMER. That's right. You didn't know what you were looking for. You didn't know what figure you were trying to get, did you? You didn't know what figure you were after, did you? You had to take his figure.

Mr. LONZO. I wasn't after any figure.

Mr. CRAMER. You were after the figure he gave you?

Mr. LONZO. I was waiting for him to appraise it. I was not the appraiser. An appraiser is one who determines and fixes a value. I only gathered the data.

Mr. SCHERER. But the real way this appraisal ought to have been done, if he is using some expert like you to get him information, is for you to give him the information and then on the basis of the information you give him, then he makes the appraisal. It wasn't done that way in this case.

Mr. LONZO. No. Well, I didn't give him any information as to the value of the property at any appraisal I had done for him, and that was the understanding.

Mr. SCHERER. You gave him, though, the data which would support an appraisal. The trouble is he gave you the appraisal in advance of you giving him the data.

Mr. LONZO. I gave him photographs. That isn't giving him the value of the property. I gave him a sketch of where it was located. That does help, because location determines a lot. Comparables I didn't give him. I didn't have any. He got that and he gave me that.

Mr. SCHERER. It sounds like a lot of doubletalk.

Mr. CRAMER. What are the rules of professional ethics in this appraisal organization for getting a figure and then trying to justify it instead of getting your own information and coming out with a figure?

Mr. LONZO. That, as I have said, I have done several hundred appraisals, but I have never called on anybody else to assist me in any way, because I wanted to be familiar in the event that it went to court.

Mr. CRAMER. Right.

Mr. LONZO. I wanted to know what I was talking about.

Mr. CRAMER. Precisely, precisely.

Mr. LONZO. However, I am not criticizing Mr. Barca. Everybody can have their own way of doing things. I got the photos, I got a sketch, I got a description. If that is assuming the value, I don't know, but that was the understanding we had.

Mr. SCHERER. As a matter of fact, sir, as an appraiser—I am not an appraiser, but the procedure followed in the Barca matter you know as an appraiser wasn't the right type of procedure to follow. It was a plain phony, wasn't it?

Mr. LONZO. It is not phony to assist anybody gathering information.

Mr. SCHERER. No, no, no, I think it is perfectly proper if I have a piece of property to appraise, and you are an expert in certain fields, and I ask you to go and get some data together that will help me, together with other information that I had, in arriving at a final figure, I think that is right.

Mr. LONZO. Right.

Mr. SCHERER. I don't see anything wrong with that.

Mr. LONZO. That is right.

Mr. SCHERER. You would have a perfect right to do that.

Mr. LONZO. That is what I did.

Mr. SCHERER. In the law business we have some people who bring together all of the law bearing on the case. Then after you have the data in front of you, you form an opinion. You don't form the opinion in advance. And that is obviously what did not happen in these cases, if I understand your testimony. You people formed your opinion first. You fixed a figure arbitrarily and then looked for data to substantiate it.

Mr. LONZO. From time to time Mr. Barca came into the office and looked over the data that I had so far before he delivered to me his determination of the value.

Mr. SCHERER. Now, as a good appraiser, you know you wait until you have all of the facts in front of you and all of the data necessary, and you use that data and make your final appraisal. Even I can understand that. That is all.

Mr. BLATNIK. Mr. May.

Mr. MAY. May we recall Mr. Beasley for just a moment, Mr. Chairman?

Mr. BLATNIK. Mr. Oscar Beasley.

Mr. MAY. On this one comparable on the Deb Trust property, it was set forth in Mr. Barca's report in this fashion:

Land Kendall to Sparton Realty Trust, Pearson Boulevard (site of the Stop and Shop) two acres, 42,200 square feet, sold October 3, 1953, cost to buy 77 cents per square foot of installation plus cost for filling and grading.

Mr. Beasley, you made an analysis of this particular sale. Could you enlighten the committee, please?

Mr. BEASLEY. Yes, sir. I went to the Stop and Shop real estate offices and talked with the real estate manager, and he was kind enough to quote his records on this case, and the facts when finally analyzed revealed that the cost, including pavement and various improvements that were required, plus land, averaged out at around 40 cents a square foot.

Mr. MAY. Yes. Mr. Barca had used that comparable sale, and then in his report for land value he used a figure of 60 cents a square foot, or a total land value of \$99,075. What did you arrive at for fair value of the land?

MR. BEASLEY. For the land I think the record shows it was purchased for \$20,127. It wasn't completely useful at the time of acquisition, because of a brook flowing through it that had to be enclosed, but at the time of purchase, the record shows \$20,127 as the cost of land.

MR. MAY. The true facts regarding that particular comparable sale would have shown 39 cents a square foot?

MR. BEASLEY. 39 cents; yes, sir.

MR. SCHERER. Mr. Beasley, you heard the colloquy between the previous witness and myself. Am I wrong in that or am I right, namely, that an appraiser first gets all of the information that is necessary to make the appraisal, and then when he has all of that information before him, he arrives at his conclusions and makes his final appraisal?

MR. BEASLEY. That is correct, sir. As a matter of fact, I have a chart which I introduced as an exhibit here several days ago, which does describe the appraisal process, and which does follow exactly what you have said, that you first get your facts and then your conclusions.

MR. SCHERER. Do you do that in other fields?

MR. BEASLEY. Everything.

MR. BLATNIK. Mr. May.

MR. MAY. With the exception of the occasion when you brought these two reports to Mr. Barca, normally Mr. Barca would come out and pick up the report as finally assembled by you.

MR. LONZO. He came through the office and went through every report, every appraisal before he signed it, and then he would pick it up.

MR. MAY. Thank you very much, Mr. Lonzo.

MR. BLATNIK. Thank you, Mr. Lonzo. May I express the appreciation of the committee for your cooperation and your assistance.

The hearings will recess and resume at 2 o'clock this afternoon with Mr. Barca. Mr. Barca, will you be here at 2 o'clock this afternoon?

MR. MAY. Mr. Chairman, before we close I would like to make the reports that we have been discussing in connection with Mr. Barca, exhibit 26-A through E.

MR. BLATNIK. Without objection it is so ordered.

(The documents referred to were marked "Barca exhibits 26-A through 26-E, inclusive," and will be found in the subcommittee files.)

MR. BLATNIK. The hearing will recess until 2 o'clock.

(Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 2 p.m. of the same day.)

AFTERNOON SESSION

Present: Representatives Blatnik (presiding), Baldwin, Cramer, Edmondson, Gray, Kluczynski, McVey, Robison, Scherer, Schwenkel, and Wright.

MR. BLATNIK. The special Subcommittee on the Federal-Aid Highway Program will please come to order. We resume our public hearings in investigating the matter of the right-of-way appraisals in the State of Massachusetts. Our first witness this afternoon is Mr. Joseph Barca. Mr. Barca, will you please take the witness chair?

Will you raise your right hand? Do you solemnly swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. BARCA. I do.

MR. BLATNIK. Will you please be seated? For the record, Mr. Barca, will you give your full name and your home residence address and your business address.

TESTIMONY OF JOSEPH J. BARCA, LEOMINSTER, MASS., ACCOMPANIED BY MAX KABATZNICK, COUNSEL

MR. BARCA. My name is Joseph J. Barca. I live at 553 West Street, Leominster, Mass.

MR. BLATNIK. What is your business address?

MR. BARCA. 114 State Street, Boston.

MR. BLATNIK. Counsel, will you identify yourself for the record, with your full name, address, and capacity?

MR. KABATZNICK. My name is Max Kabatznick, 10 State Street, Boston, and I am counsel for Mr. Barca. Do you want me to spell the name for you?

MR. BLATNIK. Yes, please.

MR. KABATZNICK. Max K-a-b-a-t-z-n-i-c-k.

MR. BLATNIK. Mr. May.

MR. MAY. Mr. Barca, what business are you now in?

MR. BARCA. Mr. Chairman and members of this committee, in view of the fact that I have been indicted by the Federal grand jury for the district of Massachusetts and this indictment is now pending before the U.S. District Court for the District of Massachusetts, in Boston, and in view of the fact that any testimony which I may give before this committee might tend to incriminate me and prejudice my constitutional rights, I have, therefore, been advised by counsel that it is my constitutional right to refuse to answer any questions before this committee.

MR. BLATNIK. Mr. May.

MR. MAY. Do I undersand, Mr. Barca, that your answer to any question put to you today would be the same?

MR. BARCA. That's right.

MR. MAY. Mr. Chairman, in view of Mr. Barca's position——

MR. BALDWIN. May I ask a question, Mr. Chairman?

MR. BLATNIK. Mr. Baldwin.

MR. BALDWIN. Could I ask counsel the points upon which Mr. Barca has been indicted, that is, the count?

MR. MAY. Yes. Mr. Congressman, Mr. Barca was indicted on August 15, 1961, by the U.S. district court in Boston, Mass., on seven counts of perjury before the grand jury which was investigating possible violations of the laws and the administration of the various Federal-aid highway acts. Mr. Barca's alleged perjury in essence was that Mr. Barca denied that he had access to State appraisal figures relating to certain properties assigned to him by the Commonwealth for appraisal.

MR. BALDWIN. And all seven counts are on the same subject?

MR. MAY. Yes, Congressman.

MR. BALDWIN. Thank you.

MR. CRAMER. May I ask a question, Mr. Chairman?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Mr. Counsel, is his indictment a part of the record or will we make it a part of the record?

Mr. MAY. Yes, Congressman.

Mr. CRAMER. Is it counsel's intention to ask questions?

Mr. MAY. Well, I was going to say, Mr. Congressman, that in view of Mr. Barca's position at this time, I will have no further questions for Mr. Barca, but we do have some information that we want in the record and I would have questions which I would put to staff members in connection with Mr. Barca.

Mr. BLATNIK. Mr. May, will you proceed.

Mr. MAY. I would like to make the indictment referred to, exhibit 27, Mr. Chairman.

Mr. BLATNIK. Without objection it is so ordered.

(The document referred to was marked for identification and received as "exhibit 27" and is retained in subcommittee files.)

Mr. MAY. In the course of our investigation, Mr. Chairman, staff members attempted to interview Mr. Barca and did interview him on a number of occasions; and on one or two occasions Mr. Constandy and I interviewed Mr. Barca. May I ask at this time that Mr. Constandy, who has been sworn, would answer certain questions concerning Mr. Barca.

Mr. Constandy, what did Mr. Barca say when you asked him how he happened to obtain fee appraisal work from the department of public works?

**TESTIMONY OF JOHN P. CONSTANDY, ASSISTANT CHIEF COUNSEL
OF THE SPECIAL SUBCOMMITTEE ON THE FEDERAL-AID HIGH-
WAY PROGRAM—Resumed**

Mr. CONSTANDY. Mr. Barca stated that in early 1959, while at the Boston Club, he heard several individuals discussing appraisal work they had received from the department of public works. He said he considered he knew as much about the appraisal business as they did and he decided to attempt to get such work.

Mr. MAY. You have already seen, Mr. Chairman, that Mr. Barca wrote a letter to Mr. DiNatale and thereafter did receive fee appraisal work.

Mr. Constandy, how did Mr. Barca set forth his qualifications in the appraisal reports he submitted to the department?

Mr. CONSTANDY. The qualifications were thus: member of the Cape Cod Real Estate Board; member of the Massachusetts Real Estate Board; member of the National Association of Real Estate Brokers; associate member of the American Right-of-Way Association. I am quoting this:

I have appraised properties for banks, mortgage companies, and for development purposes, and also for land condemnations for this and the surrounding areas—

relating to the particular appraisal on which this was taken.

Mr. MAY. During your interview with Mr. Barca, what did he have to say with respect to his appraisal experience?

Mr. CONSTANDY. Mr. Barca could not recall the name of any bank for which he had made an appraisal. He did not recall the making

of any appraisal for development purposes or land condemnations, and admitted he had made no appraisals for mortgage companies.

MR. MAY. During your interview with Mr. Barca, Mr. Constandy, how did he explain his use of Mr. Lonzo?

MR. CONSTANDY. Mr. Barca stated that he knew Mr. Lonzo was in the real estate business and he had a good reputation as an appraiser. He went down to Mr. Lonzo and asked for his assistance because he did not regard himself as "100 percent qualified to be an appraiser." He said he felt Lonzo was more qualified and experienced and "I needed Lonzo's help."

MR. MAY. Mr. Chairman, Mr. Lonzo's testimony earlier today gives rise to a number of significant questions. If Mr. Barca were testifying he could be a great help to the committee. Mr. Lonzo was apparently experienced and qualified and Mr. Barca was not. Mr. Lonzo obtained the information upon which the damages would normally be based, yet Mr. Barca from Boston, without the benefit of this essential information, was the one to fix the damages. Our question would be, how was Mr. Barca able to do that?

Secondly, in the Deb Realty Trust case, Mr. Barca furnished comparable sales information which was incorrectly set forth and which inflated the land value. Our question would be, where did Mr. Barca obtain that information?

Also concerning the Deb Realty case, Mr. Lonzo testified after using the data furnished by Mr. Barca, and after completing the appraisal reports, the figure for total damages was definitely below \$200,000, and Mr. Lonzo believed it was in the area of \$160,000. Yet when the report was submitted by Mr. Barca to the department, the figure for damages was \$247,800.

Our question would be, why and on what basis did Mr. Barca make the change?

Mr. Chairman, an analysis has shown that 20 of Mr. Barca's appraisal reports contain information on figures pertinent to value which had been obviously obtained from the department appraisals. The manner in which Mr. Barca obtained that information still remains a mystery.

MR. CONSTANDY, what did Mr. Barca say with respect to Mr. Orlando Q. Spagnoletti?

MR. CONSTANDY. Mr. Barca stated he has known Mr. Orlando Q. Spagnoletti for 6 or 7 years from seeing him in the Boston Club. Mr. Barca admitted he had discussed some of these appraisals with Spagnoletti. Mr. Barca stated when completed with the appraisals he delivered them to Spagnoletti in the right-of-way office before submitting them to the department of public works, and at that time asked Spagnoletti for his critical comments. Mr. Barca stated that Spagnoletti suggested to him certain items he could add to future appraisals to make them more complete.

Mr. Barca stated that on other occasions Mr. Spagnoletti gave him information from the department of public works files concerning properties Mr. Barca was assigned to appraise. Mr. Barca stated, however, that this was information to which he was entitled as a fee appraiser, and was not data from the department appraisals.

MR. CRAMER. Mr. Chairman, at that point the witness shook his head. Would the witness care to testify or state the reaction which was signified by his having shaken his head?

Mr. BARCA. No, sir.

Mr. MAY. Which way did he shake his head?

Mr. CRAMER. He now shook his head no.

Mr. MAY. It might be, Mr. Congressman, that he did it while I was not watching Mr. Barca. He might have shaken his head when the first part was read. We would repeat that because Mr. Barca admitted that on occasions Mr. Spagnoletti gave him information from the department files concerning property which Mr. Barca had been assigned to. However, Mr. Barca added that that was information to which he was entitled as a fee appraiser, and was not data from the departmental appraisal reports.

Mr. Constandy, what do the records—

Mr. CRAMER. Does the witness wish to answer?

Mr. MAY. Would you like to comment on that, Mr. Barca?

Mr. BARCA. No, sir. No comment, please.

Mr. MAY. On what grounds?

Mr. BARCA. On the same grounds.

Mr. MAY. Would you restate the grounds, Mr. Barca?

Mr. BARCA. On the grounds that I have read to the committee.

Mr. MAY. You are using your constitutional rights?

Mr. BARCA. That's right.

Mr. MAY. And pleading the fifth amendment?

Mr. BARCA. Yes.

Mr. MAY. And you are stating that if you answer your answer may tend to incriminate you?

Mr. BARCA. That's right, counsel.

Mr. MAY. Mr. Constandy, what do the records show with respect to the reviewing function on Mr. Barca's appraisals?

Mr. CONSTANDY. The records show Orlando Q. Spagnoletti was the departmental reviewing appraiser on 14 of the departmental appraisals from which Mr. Barca obtained information to which he was not entitled.

Mr. MAY. Mr. Constandy, what did Mr. Barca have to say with respect to a person named William M. Jacobs?

Mr. CONSTANDY. Mr. Barca stated that he has known William Jacobs for some time, having written insurance policies for him. On one occasion he believed that was perhaps in the right-of-way association affair, Mr. Barca asked Mr. Jacobs to assist him in making some appraisals for the department of public works, and Mr. Jacobs agreed to do so. Thereafter, quoting Mr. Barca, Jacobs assisted him in doing appraisals on nine properties, three at Falmouth and six at Lynnfield. Mr. Barca stated he paid Jacobs about 40 percent of what remained of Mr. Barca's fee after the expenses were paid.

Mr. Barca claimed he kept no records and did not claim that money paid to Mr. Jacobs as a deduction on his Federal income tax return, and he estimates he paid Jacobs only about \$300. Mr. Barca stated he paid this money to Mr. Jacobs not by check but by cash, because Mr. Jacobs insisted on the payment being in cash.

Mr. MAY. Mr. Chairman, I might point out that when people deal with cash it becomes somewhat more difficult to trace the payments to one another.

Mr. CRAMER. Mr. Chairman.

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Do I understand that he stated that the money he gave was \$300 after taxes?

Mr. MAY. No. What Mr. Barca said was that he paid, or estimated, a total of \$300 in cash to Mr. Jacobs, but he did not claim that as expenses on his income tax return.

Mr. CRAMER. If this were a proper expense, properly paid, why wouldn't he deduct it from his income tax as a business expense item? Isn't that the point? He is, in effect, paying it after taxes.

Mr. MAY. Since it is a point of legitimate expense it certainly could be deducted.

Mr. CRAMER. And that is a way to conceal it from those examining his income tax returns; is it not?

Mr. MAY. It could be.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Do I understand that the witness told the counsel that he reported on his income tax neither the receipt nor the expenditure of these particular funds?

Mr. MAY. If we could hold up just a minute, Mr. Congressman, we are getting to Mr. Barca's income tax returns. We will reach that point in just a moment.

Mr. WRIGHT. All right.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Constandy, did Mr. Barca explain what Mr. Jacobs' role was when it came to assisting Mr. Barca in doing his appraisals?

Mr. CONSTANDY. Yes. Mr. Barca stated that:

Mr. Jacobs inspected the properties with me and helped me with the comparables; helped to arrive at the valuation and then took me to a public stenographer to type them.

One of the properties Mr. Barca acquired as being among those on which Mr. Jacobs assisted him, was that of Annie A. Isaacson in Lynnfield, Mass.

Mr. MAY. Mr. Kopecky, with respect to the property belonging to Annie Isaacson, who was the other fee appraiser assigned to that parcel?

Mr. KOPECKY. William Jacobs was the other fee appraiser. The assignment was made on the same day as that of Mr. Barca; namely, July 7, 1959. Mr. Jacobs' appraisal reflects a figure for damages of \$29,853.49. Mr. Barca's appraisal report carries the figure of \$31,732.

Mr. MAY. There is an important development, Mr. Chairman. Here is a situation where Mr. Barca told us that on this particular property he received help from Mr. William Jacobs. The records show that Mr. Jacobs was the other fee appraiser hired by the Commonwealth of Massachusetts to appraise that property and he was assigned that, or given that assignment July 7, 1959, the same day as Mr. Barca. Mr. Jacobs' appraisal carries a figure of \$29,853, and Mr. Barca's report carried \$31,732. It seems to be a real problem when you consider that the State and the Federal Government are supposedly paying for the two separate independent appraisals and for the work and judgment of two qualified, competent fee appraisers. The Government apparently did not get what it was paying for.

Mr. Kopecky, what do the records show with respect to the number of appraisals and the amount of money received by Mr. Barca from the department of public works?

Mr. KOPECKY. Those records show that Mr. Barca was assigned a total of 45 appraisals by the department of public works. These are dated from December 22, 1958, to April 26, 1960. For these 45 appraisals he was paid by the department of public works the total of \$8,775, and the last payment was dated March 9, 1961.

Mr. MAY. Forty-five appraisals with a total amount of money of \$8,775. What do the records show with respect to the appraisals made on the properties of Sturtevant, Hamalainen, and Deb Realty?

Mr. KOPECKY. It is interesting to note that Mr. Barca's original fee for these, for the appraisal of these properties, was set at \$700. However, the same records also show that this was subsequently raised and changed to \$1,700 for the three appraisals.

Mr. MAY. To show how these people benefited, Mr. Chairman, here we have three properties—Chester Sturtevant, S-t-u-r-t-e-v-a-n-t, Wiljo Hamalainen, H-a-m-a-l-a-i-n-e-n, and the Deb, D-e-b, Realty Trust properties. These assignments were made to Mr. Barca. The initial fee was \$700. We have already heard testimony earlier today that Mr. Barca's appraisal reports on the Sturtevant property and the Hamalainen property were copied from the departmental appraisal reports and appraisals were not done. They were copied, Mr. Barca, and on the Deb Realty Trust case that was not copied but that was changed from the range of \$160,000 to \$247,800. And for those three appraisals Mr. Barca's fee was raised from \$700 to \$1,700.

Mr. Kopecky, who was the other fee appraiser on those three properties we have just mentioned?

Mr. KOPECKY. The other fee appraiser was Edward Coomey.

Mr. MAY. Was his fee also raised?

Mr. KOPECKY. No. He appraised the same three properties. His appraisal fee was not increased. He received \$700.

Mr. MAY. So Mr. Coomey and Mr. Barca were assigned these properties and when Mr. Barca got through he didn't get the original fee of \$700 but he got \$1,700. Mr. Coomey did receive the initial \$700 fee that had been originally established. Is that right?

Mr. KOPECKY. That's correct.

Mr. MAY. Mr. Kopecky, what do the records show with respect to Mr. Barca's receipt of payments for appraisal work, 1959 through 1961?

Mr. KOPECKY. The department of public works records show the following information as income to Mr. Barca: In 1959, from the department of public works, \$1,150. Again in 1959, a payment from the department of public works in connection with State department of education appraisal, \$1,200, or a total of \$2,350. In 1960 from the department of public works, \$7,500. In 1961 from the department of public works, \$125, or a total of \$9,975.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. Is this in excess of the amount of \$8,775 which was reported a moment ago on 45 appraisals?

Mr. KOPECKY. It is an excess of \$1,200 due to the fact that there was an additional payment by the department of public works for a State department of education appraisal.

Mr. WRIGHT. I am not sure I understand the answer.

Mr. MAY. It includes the \$8,700.

Mr. WRIGHT. I see. So the all-inclusive total received during the period December 1958 through the date in 1961 which you mentioned comes to what?

Mr. KOPECKY. \$9,975.

Mr. WRIGHT. Thank you.

Mr. MAY. Mr. Kopecky, we subpoenaed Mr. Barca's Federal income tax returns for the calendar years 1959 and 1960.

Mr. KOPECKY. That is correct. Yes, sir.

Mr. MAY. From his accountant in Hollywood, Fla.

Mr. KOPECKY. That is correct. And we note that Mr. Barca did not report any income in 1959. As a matter of fact he reported a loss on his tax return, or at least on the copy of the return, a loss of \$975.55.

Mr. MAY. Excuse me. He showed no income whatsoever?

Mr. KOPECKY. No income. A loss. And that loss came about as a result of a sale of an apartment building. Therefore my analysis is he failed to report the income he received in 1959 for appraisal work done on behalf of the State, or an amount of \$2,350 which was not reported.

Mr. MAY. The record shows he received \$2,350 for appraisal work that he didn't work.

Mr. KOPECKY. That is correct.

Mr. MAY. How about 1960? What happened there?

Mr. KOPECKY. In 1960 we note he reported gross appraisal fees of \$6,000. This is \$1,500 less than he was paid for appraisal work by the State. So in the two years of 1959 and 1960 he failed to report some \$3,850.

Mr. WRIGHT. Mr. Chairman.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. It appears that he received income he did not report for appraisal work which he did not do. I am appalled. The man appears to have received \$9,975 from the State of Massachusetts for work which he has not offered any evidence he performed. On the contrary, the evidence seems to be that he didn't perform the work, while the State was depending on him to provide independent appraisals on which to base their judgment; and, indirectly, the property owners were depending on him to provide an independent judgment as to the amount they should receive. The public has been out a total of almost \$10,000. I have yet to see any evidence that the man performed any work in exchange for this almost \$10,000. It appears that he gave Mr. Jacobs 40 percent of what he received for doing the actual backup work, and he gave Mr. Lonzo, in those situations in which Mr. Lonzo was helpful to him, 40 to 50 percent of the amount he received, and he appears to have pocketed the rest of it after having sent a copy of his appraisal figures from the figures earlier provided by the State. It appears to me that the State, the property owners, and the Federal Government which matches these funds, is out some \$10,000 for work it has not received.

Mr. MAY. On that, Mr. Congressman, you would have to consider that the property owners are entitled to a little bit more than Mr. Barca supplied to them. The property owners are entitled to appraisals by competent and qualified people.

Mr. CRAMER. What happened to the money? Is there anything to indicate who got the \$3,800?

Mr. MAY. We have already seen some people deal in cash. We don't know where the money is, Mr. Congressman. We know that \$2,000 went to Lonzo.

Mr. CRAMER. And how much to Jacobs?

Mr. MAY. Another \$300, according to Mr. Barca, went to Mr. Jacobs. I have no further questions for Mr. Barca through the staff in connection with this matter, Mr. Chairman.

Mr. BLATNIK. If there are no further questions that will be all, Mr. Barca.

Mr. BALDWIN. Could I ask one question of the staff, Mr. Chairman?

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. I noticed that the testimony here was that he obtained his employment by means of a letter. I have been provided with a written summary here that says in 1959 he spoke to Mr. Toumpouras about getting some appraisal work. This has not been mentioned. Was that the procedure? Did that supplement the letter?

Mr. MAY. What Mr. Barca told us, Mr. Congressman, is that he was sitting around the Boston Club and heard these other people talking about the appraisal work they were doing for the State and he said to himself, "Gracious. I can do as well as they can do." He didn't consider them qualified, so he made up his mind he could get appraisal work, too. So he walked up to the department of public works and encountered Mr. Toumpouras and Mr. Dole talking in the hall and he went up and spoke to them and told them he wanted some appraisal work, and Toumpouras said, "We will see what we can do." And then Toumpouras left and Mr. Barca talked to Mr. Dole about his vast appraisal experience, and it was thereafter he wrote the letter and did get the appraisal work.

Mr. BALDWIN. Thank you.

Mr. CRAMER. Can I ask a question?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Do we have any evidence as to who authorized the payment of the additional \$1,000 to Mr. Barca for the appraisals for which Coomey got \$700 and Barca got \$1,700?

Mr. MAY. No, Mr. Congressman, we do not. We have already heard how appraisal fees have been raised and we will hear more about it as the hearings progress. There is never any documentation. There is never any setting forth of a reason why the fee is raised from the initial fee to something far in excess of it.

Mr. CRAMER. Who at this time had the right to raise such fees in the department of public works?

Mr. MAY. Mr. Dole. But we have already heard that Mr. Dole had stated on those occasions when it was brought to his attention that the initial fee was not satisfactory, he was not experienced enough and did not know enough about the specific parcel to determine in his own mind whether the request was justified or not. So on those occasions he would talk with Herbert Dodge and discuss the matter with him.

Mr. SCHERER. You know, Mr. Chairman, the thing that irks me more and more as I sit and listen to some of these frauds that have been perpetrated, is the fact that some people have worked so hard to get this road program going in this country. And it is vitally needed. And then it is conduct like this that gives the whole program a black

eye, and the people that are connected with it. It is a small minority like this witness and the others that have appeared before us that causes all of the dedicated people connected with this program, as was mentioned by Mr. Beasley this morning, to suffer.

While we have this program well in hand, and have provided the means of financing, the money is being taken in every day from the taxpayers day in and day out to the end of this program. Approximately \$38 billion more is to be collected. If we lose the public confidence in this program it is possible that some future Congress may even upset this trust fund or stretch out this program, which none of us want. That is the reason why the conduct we have been listening to here in the last few weeks is so reprehensible. It is not alone what these men have done, but it is what it does to other people who are identified with the program, and what it might do eventually to this entire highway program on which some of us have worked so hard.

MR. BLATNIK. Mr. May.

MR. CRAMER. May I ask one more question, Mr. Chairman?

MR. BLATNIK. Mr. Cramer.

MR. CRAMER. Did the witness indicate how he was able to take a Florida vacation if he had a loss of \$975 during that year?

MR. MAY. I don't recall.

MR. CRAMER. It is not too expensive I realize, but it costs more than nothing. How could he be in Florida over the holidays when he had a net loss of \$975?

MR. WRIGHT. He had a credit card.

MR. KLUCZYNSKI. The gentleman is from Florida. They don't ask you how you got it, but have you got it.

MR. CRAMER. That is the very point. He obviously had it and did not inform Uncle Sam as to how he got it. That's all.

MR. BLATNIK. That will be all, Mr. Barca.

MR. BARCA. Thank you, Mr. Chairman.

MR. BLATNIK. The next witness is Mr. Arthur Thomas Bennett, of Needham, Mass. Mr. Bennett, will you raise your right hand. Do you solemnly swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. BENNETT. I do.

MR. BLATNIK. Mr. Bennett, for the record give your full name.

TESTIMONY OF ARTHUR THOMAS BENNETT, DIVISION APPRAISER, BUREAU OF PUBLIC ROADS, NEEDHAM, MASS.

MR. BENNETT. Arthur T. Bennett.

MR. BLATNIK. And your address?

MR. BENNETT. 159 Parker Road, Needham Heights, Mass.

MR. BLATNIK. What is your occupation?

MR. BENNETT. Division appraiser for the bureau of public roads.

MR. BLATNIK. Located where?

MR. BENNETT. In Massachusetts.

MR. BLATNIK. Mr. May.

MR. MAY. Mr. Constandy will question the witness.

MR. BLATNIK. Mr. Constandy.

MR. CONSTANDY. Mr. Bennett, are you a graduate engineer?

MR. BENNETT. Yes.

Mr. CONSTANDY. Are you registered?

Mr. BENNETT. I am registered in the State of Massachusetts and Maryland.

Mr. CONSTANDY. Were you employed after graduation from college by the State highway department?

Mr. BENNETT. Yes, sir, I was.

Mr. CONSTANDY. Where was that? Could you tell us?

Mr. BENNETT. By the Maryland State Highway Commission. I was a member of the first four men who were in the right-of-way department when it was formed in 1929.

Mr. CONSTANDY. The State of Maryland formed their right-of-way department in 1929?

Mr. BENNETT. Yes.

Mr. CONSTANDY. And it had four men in it and you were one of the four. Is that right?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. For how long did you stay there?

Mr. BENNETT. Approximately 12 years, I think.

Mr. CONSTANDY. Was your work for the Maryland State Highway Department entirely involved with the right-of-way-section?

Mr. BENNETT. No. Partly with right-of-way, and at one time I was loaned to Grant & Co., and I did some work for Maryland on the Bay Bridge at that time.

Mr. CONSTANDY. During that period for how long were you in the right-of-way division?

Mr. BENNETT. I would say about 4 years at least in the right-of-way department.

Mr. CONSTANDY. For some 7 years since then, excluding the war years, you had other employment. What did you do in connection with your engineering work?

Mr. BENNETT. Well, I was mostly in right-of-way work, practically all that whole time. Previous to coming to work in Massachusetts I worked for Peter F. Loftus in Pittsburgh and was a consultant to Duquesne Life and bought all the right-of-way into the first atomic energy plant at Shippingport. Previous to that I worked on the White Line from a section in White Plains, N.Y., to Connecticut for the White Line Natural Gas Co. of Massachusetts.

Previous to that I worked for Pennsylvania Water & Power in central Pennsylvania and bought 22 miles of land for high tension transmission line 150 feet in width in Lancaster County, and 250 in Dauphin County. That was all fee right-of-way.

Previous to that I worked for different consulting firms—Wilson Dower. I did some work on the expressway that goes from Washington to Baltimore.

Previous to that I worked on large transmission lines from Texas to New York and was the certifying engineer in Maryland for that line.

Mr. CONSTANDY. After you left Maryland you had some 7 or 8 years of experience as a right-of-way engineer?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Included in that experience did you become familiar with all of the facets of land acquisition for rights-of-way?

Mr. BENNETT. Yes, sir, I did.

Mr. CONSTANDY. Did you do preliminary work?

Mr. BENNETT. Yes.

Mr. CONSTANDY. Did you coordinate the work of construction?

Mr. BENNETT. Yes.

Mr. CONSTANDY. You did appraisals?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you review appraisals?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you negotiate for the settlement?

Mr. BENNETT. I did, sir.

Mr. CONSTANDY. You began working for the bureau of public roads when, Mr. Bennett?

Mr. BENNETT. May 13, 1957.

Mr. CONSTANDY. What was the position you were to undertake at that time?

Mr. BENNETT. At that time I was assigned to Massachusetts as a division appraiser.

Mr. CONSTANDY. As a division appraiser?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Who was the division engineer at that time?

Mr. BENNETT. At that time it was John A. Swanson.

Mr. CONSTANDY. Were you responsible to the division engineer?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. What was your duty in connection with that job as it related to the division engineer?

Mr. BENNETT. I was to advise the division engineer of anything in regard to right-of-way matters.

Mr. CONSTANDY. That included the operation of the Massachusetts Department of Public Works?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. The right-of-way activity?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. What was your GS grade?

Mr. BENNETT. It was GS-12.

Mr. CONSTANDY. When you went to Massachusetts as division appraiser did you replace someone else?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. Will you explain that?

Mr. BENNETT. Previous to that time the right-of-way was handled by the engineers in the bureau of public roads. A man was assigned to it, and that was Mr. Thomas Sullivan, and there was no formal way of handling right-of-way except under the engineers at that time.

Mr. CONSTANDY. So it was a new job for the bureau of public roads?

Mr. BENNETT. A new job, and I was a new man.

Mr. CONSTANDY. And a new job for you?

Mr. BENNETT. Yes.

Mr. CONSTANDY. When you began there were you given indoctrination or training in connection with the duties you were to perform?

Mr. BENNETT. I was inducted into the service in Chicago.

Mr. CONSTANDY. Not in the service. In the bureau of public roads.

Mr. BENNETT. In the right-of-way seminar and had the benefit of the 3-day seminar, and left immediately from there and went to Boston.

Mr. CONSTANDY. What if any indoctrination or guidance did you get when you got to Massachusetts?

Mr. BENNETT. Whatever literature—whatever was available. The PPM's and the other directives of the bureau.

Mr. CONSTANDY. Did someone sit down with you and explain what your functions would be?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. They did not?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. You read the PPM's and regulations?

Mr. BENNETT. Yes, sir. You are speaking of the division office in Massachusetts?

Mr. CONSTANDY. Well, anyone in Massachusetts who at the time you arrived there, took it upon themselves to tell you what you were supposed to do.

Mr. BENNETT. No, sir.

Mr. CONSTANDY. No?

Mr. BENNETT. No.

Mr. BALDWIN. One question, Mr. Chairman.

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. Did you ask anybody what you were supposed to do?

Mr. BENNETT. I have a position description which would indicate to me what I was to do, sir.

Mr. BALDWIN. In other words, that position description constitutes a written set of instructions as to what you are supposed to do?

Mr. BENNETT. Yes, sir.

Mr. BALDWIN. All right.

Mr. CONSTANDY. Maybe, Mr. Bennett—let us get into the duties you had as division appraiser and still have—is that right?

Mr. BENNETT. Sir?

Mr. CONSTANDY. Maybe we could get into the duties you have as a division appraiser.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. What were your duties in connection with the review of preliminary right-of-way plans?

Mr. BENNETT. I reviewed all preliminary right-of-way plans.

Mr. CONSTANDY. Just what is a preliminary right-of-way plan, simply?

Mr. BENNETT. It is a plan presented by the State to the Bureau of Public Roads with just outside taking lines, which would be the lines on the outside. In some cases there would be buildings sketched in or plans written up with buildings and improvements, and in those cases, why, I would review those plans at that time.

Mr. CONSTANDY. Does this come about in this way: That the State of Massachusetts decides they will plan a certain road. In connection with that they will have to take certain right-of-way.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. The plans showing the right-of-way they intend to take are submitted to the Bureau of Public Roads for their approval?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. That in turn is sent to you?

Mr. BENNETT. Yes.

Mr. CONSTANDY. You review those plans?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. For what are you reviewing them?

Mr. BENNETT. I was reviewing the fact of the widths of right-of-way and to determine what was taken.

Mr. CONSTANDY. It was necessary for you to approve them before the State could be given the authorization to proceed?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Was there much of that work?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Could you give us some idea of how much? Let's say beginning in the period you began in, through 1958 and 1959?

Mr. BENNETT. Well, at that time, sir, why, there was quite a bit of pressure to get the highway program started, and I had a lot of reviewing plans at that time. They have tapered off somewhat at this time.

Mr. CONSTANDY. That came about near the beginning of the interstate program. Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. As a result of the interstate program there were a great number of projects that were submitted by the State to the Bureau?

Mr. BENNETT. Yes.

Mr. CONSTANDY. Each of these have their right-of-way plans to be preliminarily reviewed by you?

Mr. BENNETT. That's right.

Mr. CONSTANDY. About how long did you spend each week reviewing preliminary right-of-way plans?

Mr. BENNETT. That would be hard to say. In the early part of the program, why, considerable time was spent on the plans. Being an engineer I didn't have too much difficulty with them.

Mr. CONSTANDY. You understood them?

Mr. BENNETT. But it took time to do them. Yes, sir.

Mr. CONSTANDY. Did you have duties that were related to utility locations and relocations?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Will you explain that?

Mr. BENNETT. It was found more or less that I knew something about utilities.

Mr. CONSTANDY. You had been working on them for some 7 years prior to then.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. You knew pretty much, didn't you?

Mr. BENNETT. And anything that had to do with a utility relocation or crossing was referred to me in most cases. Of course, they all had right-of-way on them, of course.

Mr. CONSTANDY. Was there much of that work?

Mr. BENNETT. Well, in Massachusetts, in urban areas there was quite a bit of that work.

Mr. CONSTANDY. Did you spend a day a week at it?

Mr. BENNETT. It would depend on how the work would come in.

Mr. CONSTANDY. On an average.

Mr. BENNETT. It might. I wouldn't say—maybe a day a week over the years.

Mr. CONSTANDY. How about reviewing the preliminary plans? How many days a week did you spend on that on the average over a period of years?

Mr. BENNETT. That would be hard to say.

Mr. CONSTANDY. Would it be a day or two?

Mr. BENNETT. It would depend on how—I would say in the early part of the program I spent more time on it than I do at this time, because we are not getting those plans. So it was pretty heavy in the beginning of the program.

Mr. CONSTANDY. Yes, but we have to get some understanding of what "heavy" means. Is it something that would take a day or two a week during the period it was heavy?

Mr. BENNETT. In that heavy period it might take a day or two a week. Yes, sir.

Mr. CONSTANDY. Did you have any duties in connection with the reviewing of the final vouchers?

Mr. BENNETT. The regional auditor, when he was presented the final voucher, at that time usually asked me to interpret the plan and check the parcels against the voucher to make sure that the areas and the names of the parcels that were taken coincided with the voucher at that time for payment.

Mr. CONSTANDY. Let me see if I understand this correctly. Some of the property has been acquired. The Bureau of Public Roads is curious as to whether the person who actually owned the land actually got paid for it.

Mr. BENNETT. That's right.

Mr. CONSTANDY. And it was your function during that period to see that the same person who had the ownership of the property was the recipient of the check for the State to pay for it.

Mr. BENNETT. Yes. Check the vouchers in the areas against the plans.

Mr. CONSTANDY. Did you spend much time on that work?

Mr. BENNETT. Again that was in the early part of the stages and at the time I was there it was heavy. Now, of course, it is nothing, practically.

Mr. CONSTANDY. In addition to these duties, did you have correspondence that you answered?

Mr. BENNETT. Yes, sir. I answered various correspondence from the Washington region, and also wrote memos to the division engineer on different things I was investigating, and things like that.

Mr. CONSTANDY. During the course of a week on the average during the years we are talking about, 1958 to 1959, how much time did you spend with the correspondence?

Mr. BENNETT. Correspondence would take about a day a week.

Mr. CONSTANDY. Did you dictate that to somebody?

Mr. BENNETT. No, sir. I had no secretary and no assistants.

Mr. CONSTANDY. How did you write the letters?

Mr. BENNETT. I wrote them in longhand.

Mr. CONSTANDY. And subsequently they were retyped?

Mr. BENNETT. If there was—if I could get them typed. Yes, sir.

Mr. CONSTANDY. Did you have any responsibilities in connection with legislation that was submitted by the State legislature?

Mr. BENNETT. Yes, sir. I was assigned to watch all of the legislation in Massachusetts that might be presented to the general assembly that might have some effect on the highway program.

Mr. CONSTANDY. And you were expected to follow that legislation?

Mr. BENNETT. I was expected to follow the legislation to see what happened. Yes, sir.

Mr. CONSTANDY. And interpret it?

Mr. BENNETT. Sir?

Mr. CONSTANDY. Were you expected to interpret the bills submitted?

Mr. BENNETT. I was asked to interpret some of them. Yes, sir.

Mr. CONSTANDY. And thereafter make recommendations on certain of those that you felt had an effect on the highway program. Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Was your principal duty reviewing appraisals?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. We have seen a number of things you had to do in addition. Your principal function was to review the appraisals the State was buying from fee appraisers. Is that right?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. And appraisals being made up by employees of the department in connection with takings.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. How many projects a year on which there is Federal aid of one type or another, did you have in Massachusetts?

Mr. BENNETT. We have 72 active right-of-way projects right now.

Mr. CONSTANDY. In the course of a year, how many new ones would you have?

Mr. BENNETT. That would depend on how the work was progressing. It is hard to say just how many would come. I never took a check of that.

Mr. CONSTANDY. Could you give us an estimate?

Mr. BENNETT. It is hard to say on right-of-way plans how many of them we would encounter.

Mr. CONSTANDY. I want to know how many new projects were commenced in the State during the course of the years 1958 and 1959?

Mr. BENNETT. How many were approved for work and started off?

Mr. CONSTANDY. OK.

Mr. BENNETT. I really don't know how many were approved at that time.

Mr. CONSTANDY. When we discussed it earlier you had the thought that it was some 400. Would that be correct, or approximately correct?

Mr. BENNETT. That might be correct. Yes, sir. It is hard to say.

Mr. CONSTANDY. Would you be able to estimate approximately how many parcels were taken on which there was expected to be participation by the Federal Government?

Mr. BENNETT. In a year it would be between 3,500 and 4,000 takings.

Mr. CONSTANDY. On any parcel that was expected to cost more than \$2,500 there would be three appraisals. Is that correct?

Mr. BENNETT. Yes, sir. The staff appraisal and two fee appraisals.

Mr. CONSTANDY. One made by an employee of the department and two by fee appraisers?

Mr. BENNETT. That's right.

Mr. CONSTANDY. The one made by an employee during those years would have been under whose supervision and direction?

Mr. BENNETT. Under Lester Ellis.

Mr. CONSTANDY. What was his function?

Mr. BENNETT. He was a right-of-way engineer for the State of Massachusetts at that time.

Mr. CONSTANDY. Was he later replaced by Mr. Herbert Dodge?

Mr. BENNETT. Yes sir.

Mr. CONSTANDY. And the two fee appraisers would have been under whose direction?

Mr. BENNETT. Under direction of the commissioner.

Mr. CONSTANDY. That would have been Dole. Was it expected each of these appraisals would be made independently by each of the appraisers assigned to do the work?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. You didn't expect they would get together and compare the information and prepare them jointly. Is that right?

Mr. BENNETT. That's right.

Mr. CONSTANDY. If we could just discuss for a moment the department's appraisal. Those appraisals made by employees of the department of public works under the supervision of Mr. Ellis. Basically what approach did they use in making their appraisals?

Mr. BENNETT. Mostly the reproduction cost. They used the Marshall Stevens service.

Mr. CONSTANDY. Would that be an estimate of its cost today, if it were built today in that area, and from that cost today allowing the depreciation for the age of the building or its utility, so that you would have reflected what the building would cost new today, minus depreciation?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Is that a sound appraisal approach?

Mr. BENNETT. It is the highest approach to value.

Mr. CONSTANDY. You did that type of appraisal?

Mr. BENNETT. We did that type of appraisal. Yes, sir.

Mr. CONSTANDY. And you would end up with the highest of the other approaches. Is that correct?

Mr. BENNETT. That is correct.

Mr. CONSTANDY. And it would indicate a higher value than if you did, let us say, a capitalization of income?

Mr. BENNETT. That's right.

Mr. CONSTANDY. Is there a hazard in such an approach?

Mr. BENNETT. Well, it is just the highest appraisal value which you would have of the three approaches considered.

Mr. CONSTANDY. It comes down to the judgment of the appraiser, does it not, as to how much he in his opinion allows for depreciation, is it not?

Mr. BENNETT. That's right.

Mr. CONSTANDY. If you have an appraiser who uses poor judgment, or has an ulterior motive and allows a smaller depreciation than what he should properly, you will have an indication that the building is worth more than it properly is.

Mr. BENNETT. Yes, sir. That is a very great lever.

Mr. CONSTANDY. So there is that hazard?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. And it requires supervision on the part of the people requesting these appraisals to see that the departmental employee who is making them uses judgment as to the depreciation he allows on a given property.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you concern yourself very much with the department appraisals?

Mr. BENNETT. Well, when I first came there the program was fully accepted by the Bureau of Public Roads. The submission from Massachusetts was accepted with minor points, and I accepted—

Mr. CONSTANDY. Let's stop there for just a minute. The Bureau of Public Roads had requested of the State of Massachusetts that they submit what their right-of-way process would be. Is that right?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. In their program?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. When you arrived in Massachusetts, the Bureau of Public Roads had just accepted that outline as submitted by the State of Massachusetts?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. As being the manner in which they would acquire right-of-way?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. You felt that constituted some sort of approval?

Mr. BENNETT. I would say so.

Mr. CONSTANDY. OK.

Mr. BALDWIN. Mr. Chairman, could I ask a question?

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. On the State procedure that had been approved by the Bureau of Public Roads, how did the State procedure indicate how the valuation of a right-of-way should be determined? Was it market value, or this replacement cost less depreciation, or some other procedure?

Mr. BENNETT. It was supposed to be market value.

Mr. BALDWIN. Market value?

Mr. BENNETT. Yes.

Mr. BALDWIN. It was not supposed to be replacement cost less depreciation? Is that right?

Mr. BENNETT. That was the way they arrived at market value.

Mr. BALDWIN. But in Massachusetts the law specified they should determine market value?

Mr. BENNETT. Yes, sir.

Mr. BALDWIN. In determining their right-of-way appraisals?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. The thing in land takings is fair market value.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. That is the thing you are trying to arrive at in the value of property you are taking?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. The State's practice was to use the reproduction minus depreciation approach?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. They had also concerned themselves with the value of the land on which these improvements that you could acquire in that approach were situated?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. What type of approach did they use to determine land values?

Mr. BENNETT. They used comparables, but they did not appear in the appraisals.

Mr. CONSTANDY. Comparable sales?

Mr. BENNETT. That's right.

Mr. CONSTANDY. In other words, they would, at least theoretically, find sales in the open market of property which they could adjust as to comparability with the subject property and thereby arrive at a square foot per acre value, whatever the unit would be, for the land they were appraising?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. You say that did not appear in the appraisal?

Mr. BENNETT. No, sir. It was kept in the field offices out in the field, but that information did not go on the appraisals.

Mr. CONSTANDY. Should it have?

Mr. BENNETT. It should have. Yes, sir.

Mr. CONSTANDY. Was it required?

Mr. BENNETT. Well, I would say that it should have been in there.

Mr. CONSTANDY. But it was not?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. You feel there is any reason why you couldn't criticize the practice that the State was following in the making of its own appraisals?

Mr. BENNETT. Well, there were submissions of sample appraisals to the Bureau of Public Roads before I came here in both fee and State, and of course they were accepted at that time as they were submitted. So at that time I didn't think I should go behind them.

Mr. CONSTANDY. Was there any other reason why you felt you ought not go behind them?

Mr. BENNETT. Sir?

Mr. CONSTANDY. Is there any other reason?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. How about Mr. Ellis?

Mr. BENNETT. Well, Mr. Ellis was a national figure when I was first introduced to him. I was well advised of that and I was told they had one of the best organizations in the country. And I accepted it that Mr. Ellis was an honest man and had a good organization.

Mr. CONSTANDY. You didn't feel it incumbent on you——

Mr. BENNETT. To come in——

Mr. CONSTANDY (continuing). To criticize Mr. Ellis' operation after it had just been accepted by the Bureau of Public Roads, and when, in fact, Mr. Ellis had been one of the authorities used by the Bureau of Public Roads in establishing the requirements. Isn't that right? Wasn't he?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you take any comfort in the review you felt was being made in the State's appraisals?

MR. BENNETT. I thought a review of the State appraisals was good. They had men who had been there 25 to 30 years and they were the ones who were reviewing them in most cases.

MR. CONSTANDY. In most cases. Who was doing the reviewing for the State during this period?

MR. BENNETT. The State appraisals?

MR. CONSTANDY. Yes. Who was approving them, or reviewing them, rather?

MR. BENNETT. You want names?

MR. CONSTANDY. Well, Carleton Colburn?

MR. BENNETT. Colburn.

MR. CONSTANDY. Let's stop with him.

MR. BENNETT. John MacNeil.

MR. CONSTANDY. Did you feel Mr. Colburn was a good appraiser and knew his business?

MR. BENNETT. I do. He was one of the best there.

MR. CONSTANDY. How about Mr. MacNeil?

MR. BENNETT. Just behind him.

MR. CONSTANDY. Someone else?

MR. BENNETT. Jack Thompson, who has since left and retired.

MR. CONSTANDY. Did you feel he was qualified?

MR. BENNETT. Yes, sir. He handled all of the central work, if the State of Massachusetts was doing appraisals on that, and was very qualified.

MR. CONSTANDY. Was there someone else doing appraisals?

MR. BENNETT. During this time I felt that possibly Elton Stephen was a good appraiser.

MR. CONSTANDY. At that time you did?

MR. BENNETT. At that time; yes.

MR. CONSTANDY. In regard to Mr. Colburn, Mr. Thompson, and Mr. MacNeil at least, it has been our impression during the course of this investigation that they are, in fact, quite qualified.

MR. BENNETT. They are good men.

MR. CONSTANDY. They enjoy a very fine reputation among the people in the State and the bureau of public roads as to their own qualifications and their own ability in making appraisals or reviewing them.

We have had testimony just earlier today in which was shown Mr. Orlando Q. Spagnoletti reviewed appraisals—at least some of those appraisals. I believe 14 were made by Mr. Barca who had just testified. Were you aware that Mr. Spagnoletti was making them or reviewing them?

MR. BENNETT. No, sir; I was not.

MR. CONSTANDY. You were not?

MR. BENNETT. No, sir.

MR. BALDWIN. Let me ask you a question. When you say you were not, the record of the review of appraisals we have scanned this morning show the name of the reviewing appraiser on each one. Did a copy of these records go to you?

MR. BENNETT. No, sir. They were available to the department of public works.

MR. CONSTANDY. They were available to you, if you wanted to look at them, weren't they?

MR. BENNETT. If I wanted to look at them. Yes, sir.

Mr. CONSTANDY. Had you known Mr. Spagnoletti was reviewing appraisals, would you have taken comfort in that?

Mr. BENNETT. I certainly would not.

Mr. CONSTANDY. You didn't feel he would be qualified?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. As far as the State's appraisals?

Mr. CRAMER. Mr. Chairman.

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Do you mean at the time that you were reviewing these matters, before any of these hearings or this information became public, you didn't think that Spagnoletti at that time was qualified?

Mr. BENNETT. I didn't know he was reviewing them.

Mr. CRAMER. Do you think he was qualified as a State employee to handle appraisal work?

Mr. BENNETT. I don't think so, sir.

Mr. CRAMER. Why?

Mr. BENNETT. I think there was too much background to Mr. Spagnoletti. It was very evident in the department.

Mr. CRAMER. Like what?

Mr. BENNETT. Well, he seemed to come and go as he pleased.

Mr. CRAMER. And you knew about that when you were with the Bureau a long time ago. Isn't that right?

Mr. BENNETT. Since 1957. Yes, sir.

Mr. CRAMER. What else was evident about Mr. Spagnoletti's activities that caused you to make the remark you just made concerning him?

Mr. BENNETT. Well, I don't know what else I could offer, sir, excepting that he was a free agent in the department of public works. He would be there and it might be weeks I wouldn't even see him in the department, and I might see him 2 days, and it might be weeks again before I would see him.

Mr. CRAMER. Why did you understand he was permitted to act as a free agent?

Mr. BENNETT. I don't know, sir. I thought he was—he had some sort of connections, or something like that.

Mr. CRAMER. That is about exactly what he had. That's all.

Mr. CONSTANDY. So we have two basic groups of appraisals—those made by the department and those fee appraisals made by others.

Mr. BENNETT. That's right.

Mr. CONSTANDY. You took comfort in the fact that the department's appraisals, if they could just review them under the procedures followed by the State as the Bureau of Public Roads reviewed them when they accepted them, considering that Mr. Ellis was the head of the department and a national figure whose integrity and honesty you believed to be unimpeachable—you felt they were being reviewed by people whom you felt were competent?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you thereafter review any of the departmental appraisals?

Mr. BENNETT. Occasionally I did, sir.

Mr. CONSTANDY. Were you made aware that occasionally Mr. Colburn and Mr. MacNeil and Mr. Thompson were on occasion passed over on their review of the appraisal?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. You mentioned on occasion you did review the departmental appraisals. How would that come about?

Mr. BENNETT. Just in a course of working.

Mr. CONSTANDY. In the course of working. Did you each week, or every so often, secure a group of appraisals made by departmental employees and review them or not?

Mr. BENNETT. Yes, sir, I did.

Mr. CONSTANDY. Frequently?

Mr. BENNETT. As frequently as I could, sir.

Mr. CONSTANDY. How often would that be?

Mr. BENNETT. It was usually when I would go over to the State for some other matter. I would spend the rest of the day looking at their appraisals.

Mr. CONSTANDY. How often did that come about?

Mr. BENNETT. Oh, I didn't go too much into the State appraisals because I relied on the organization under Mr. Ellis.

Mr. CONSTANDY. We haven't the answer to the question yet, How often did you review departmental appraisals? Would it be once a month, or once every 2 months?

Mr. BENNETT. Sir, I would say every couple of weeks I would be over there looking at them.

Mr. CONSTANDY. How many would you look at on the occasion when you would be there?

Mr. BENNETT. It would depend on the time I had when I was over there. I might look at two or I might look at five.

Mr. CONSTANDY. Departmental appraisals?

Mr. BENNETT. Departmental.

Mr. CONSTANDY. Did you conduct a full review of them?

Mr. BENNETT. Not a full review. No, sir. I was spot-checking mostly.

Mr. CONSTANDY. Those that you did look at, to what extent did you review them?

Mr. BENNETT. More as to the content and as to what they were, and whether the values appeared to be reasonable.

Mr. CONSTANDY. Did you on occasion find some didn't appear to be reasonable?

Mr. BENNETT. The ones I didn't, I went out into the field to check.

Mr. CONSTANDY. Did you find any of those you went out into the field to check, to be unreasonable?

Mr. BENNETT. Occasionally, and I would take it up with the supervisor who made the review.

Mr. CONSTANDY. What would he do?

Mr. BENNETT. Either explained it to me, or I would find the reason why he had increased the value. In some cases it would be a taking of an easement, or a slope that might be different. There might be a septic tank listed, or some improvement on the property that might change the property, that was not included in the appraisal.

Mr. BALDWIN. Could I ask a question, Mr. Chairman?

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. Did the State department of public works ever reduce an appraised value as a result of your queries?

Mr. BENNETT. Did they change them?

Mr. BALDWIN. Yes.

Mr. BENNETT. No, sir. It was usually to satisfy myself in my own mind as to why they did a certain thing. Just if there would be an additional amount, why, I would go out and find maybe a septic tank list, or something like that. In those cases it was included in the appraisal. It was minor things.

Mr. CONSTANDY. Was there a full documentation accompanying the departmental appraisal for you to adequately sit down and review it?

Mr. BENNETT. No, sir. You had to go out in the field and check it. To adequately check it you would have to check each one.

Mr. GRAY. Mr. Chairman.

Mr. BLATNIK. Mr. Gray.

Mr. GRAY. I would like to find out how many of these do you think were remanded out in the field to spot check?

Mr. BENNETT. How many did I go out to check?

Mr. GRAY. What percentage? You said you went ever 2 or 3 weeks, and looked at three to five. Would you say 50 percent of those you went out in the field on?

Mr. BENNETT. No, sir. I didn't find that many.

Mr. GRAY. How many?

Mr. BENNETT. I found several. Three or four or five or six of those. I had most of my investigation and check on the fee appraisals. The reason why I did that was I figured that the Board of Review gave more weight to the fee appraisals than they did to the State appraisals.

Mr. GRAY. Pursuing further the question asked on the other side, were any of these changed substantially after you went out into the field?

Mr. BENNETT. There were not substantial changes at that time.

Mr. GRAY. There were?

Mr. BENNETT. There were not. There were just these minor things as to why such and such happened.

Mr. GRAY. In other words, you didn't suspect what was going on from making spot checks in the field?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. You told us that you would look at the departmental appraisals, and if I understand your answer to the question just asked, there was not sufficient documentation accompanying a departmental appraisal to make any kind of review.

Mr. BENNETT. That's right.

Mr. CONSTANDY. Unless you did go out in the field and check in the field. Does it follow on all these you said you investigated, in each case you went out into the field and physically looked at them?

Mr. BENNETT. I would go out in the field and, in some cases I secured the comparables and would go to the field office to check them. Of course, they were not included in the State appraisal. And on one occasion I went to Littletown with the regional appraiser. We went over and were just checking what comparables they had in the office.

Mr. CONSTANDY. That is on one job.

Mr. BENNETT. That was one I recall. I was on others.

Mr. CONSTANDY. In the course of a year, Mr. Bennett, and you fully recognize what the word "review" means—in the course of a year how

many departmental appraisals did you review, whether it took you in the field or you were able to do it in the office?

Mr. BENNETT. What year?

Mr. CONSTANDY. Help yourself, 1958 or 1959.

Mr. BENNETT. I would say 1958 I might have gone out on 25 to check.

Mr. CONSTANDY. And you conducted a full review on 25 of the parcels?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. That would be of some 3,500 takings that year. Is that correct?

Mr. BENNETT. Yes, sir. You see, when you say 3,500 takings, you mean—you also note that would mean if they are over \$2,500 you would have three appraisals on each one.

Mr. CONSTANDY. It does not change the fact that you testified there were from 3,500 to 4,000 parcels taken each year.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. So in 1958 and/or 1959 there were in fact 3,500 to 4,000 takings that year, and you would have gone out into the field and reviewed 25 of them. Is that correct?

Mr. BENNETT. That's right.

Mr. CONSTANDY. It does not matter that there were also other appraisals, does it?

Mr. BENNETT. That's right.

Mr. CONSTANDY. As a matter of fact did you not leave the review of the departmental appraisals to Mr. Ellis and his subordinates?

Mr. BENNETT. I did in most cases. I would say practically all cases. I depended on them.

Mr. CRAMER. Did I understand you to say that was because of the confidence you had in Mr. Ellis?

Mr. BENNETT. The confidence in Mr. Ellis and those men he referred to that were reviewing that work.

Mr. CRAMER. Why did you have so much confidence in Mr. Ellis?

Mr. BENNETT. He helped to formulate the PPM and was a member of the National Advisory Board.

Mr. CRAMER. Who appointed him?

Mr. BENNETT. He was called to Washington and helped to form the PPM under which we operate.

Mr. CRAMER. He was appointed by the American Association of State Highway Officials.

Mr. BENNETT. Yes.

Mr. CRAMER. And he was in charge of that committee, and it was at the time when Mr. Whitton was the president of that.

Mr. BENNETT. I don't know that.

Mr. CRAMER. And the American Association of State Highway Officials group came up with recommendations and from that the Bureau drew up some regulations.

Mr. BENNETT. Yes, sir.

Mr. CRAMER. And because of that you had some confidence in Mr. Ellis?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. You relied more on his department than you would on other departments that don't have that kind of background?

Mr. BENNETT. I did, sir. I thought that was a well-set-up department.

Mr. CRAMER. And you didn't find anything in your review of appraisals, or otherwise, that led you to believe there was something wrong, or fishy going on and that they were paying too much money for right-of-way?

Mr. BENNETT. No, sir. I didn't see anything wrong with that.

Mr. CRAMER. That is all.

Mr. CONSTANDY. Did you concern yourself primarily then with those appraisals made by fee appraisers. Is that right?

Mr. BENNETT. Yes, sir, I did.

Mr. CONSTANDY. And they would have been appointed by Mr. Dole and answerable to Mr. Dole?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Who was the associate commissioner. Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. At the time you got there in 1957, in May, they had been using fee appraisers prior to your arrival, had they not?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. They continued to use those same people after you arrived?

Mr. BENNETT. They used the same people and added other names to the list, and so forth and so on. They would be men that would come and go on that list.

Mr. CONSTANDY. So there was a list when you got there?

Mr. BENNETT. Yes.

Mr. CONSTANDY. But there would be people added to it and other people taken off from the list?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you have a list of the appraisers who were being used?

Mr. BENNETT. I received a list I think. At different times I would receive a list but the list would change so rapidly it was almost impossible to keep up with it. There would be men added and then taken off.

Mr. CONSTANDY. After Commissioner Dole would appoint the fee appraiser, that fee appraiser would submit his report back to Mr. Dole. Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Do you know whether Mr. Dole reviewed those appraisals when he got them back?

Mr. BENNETT. No, sir, he didn't.

Mr. CONSTANDY. Do you know whether Commissioner Dole had the background and capacity to review those appraisals?

Mr. BENNETT. He did not, sir.

Mr. CONSTANDY. After he got them back he would then submit them to the real estate review board would he not?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Does it follow, then, that to your knowledge and during that time there was no review made of the State's fee appraisals prior to the time they went to the review board?

Mr. BENNETT. Yes, sir. That is right.

Mr. CONSTANDY. Also, did you believe that the real estate review board conducted a review of the appraisals itself in the context in which we have been talking about the other review of the appraisals?

Mr. BENNETT. Yes, sir. It was my understanding that they would review the appraisals and they would check the figures.

Mr. CONSTANDY. Did you take some comfort from that fact?

Mr. BENNETT. I certainly did.

Mr. CONSTANDY. A board of five men, qualified real estate men, who were receiving from Commissioner Dole fee appraisals which no one else previously reviewed?

Mr. BENNETT. That's right.

Mr. CONSTANDY. What was the purpose in your reviewing the fee appraisals?

Mr. BENNETT. In a program as large as that you will find a certain group of people that are in it as appraisers who are not appraisers, and I was trying to weed them out.

Mr. CONSTANDY. You were trying to find those people who were incompetent?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Was that the only purpose for your review?

Mr. BENNETT. Well, I felt that if that weeding could be done it would allow the review board to make a better determination.

Mr. CONSTANDY. Did you do the review of the appraisals in the way you were expected to review the appraisals?

Mr. BENNETT. Spot checked, only, sir.

Mr. CONSTANDY. Spot checked?

Mr. BENNETT. Spot checked.

Mr. CONSTANDY. Will you explain that? What is meant by a spot check?

Mr. BENNETT. A spot check would mean that the way I did it was I tried to check a man. I couldn't follow particular jobs. I would take a man and I would check him for about three appraisals, and if I thought he would put the right content in it I would record his name and wouldn't check him next time and I would take another name and follow him through, and if he did bad work I would refer that work back to Commissioner Dole to be returned to the appraiser for the additional information.

Mr. CONSTANDY. Did you review the appraisals on one project, or jump around?

Mr. BENNETT. Jump around.

Mr. CONSTANDY. You were following a man then, rather than a project. Is that right?

Mr. BENNETT. That's right.

Mr. KLUCZYNSKI. Mr. Chairman.

Mr. BLATNIK. Mr. Kluczynski.

Mr. KLUCZYNSKI. Mr. Bennett, you say you spot checked a man. If you found an appraiser doing a good job you would just let him continue doing that job. You wouldn't bother him at all?

Mr. BENNETT. That's right.

Mr. KLUCZYNSKI. Suppose he were a fellow who was suspicious and who had made a fake appraisal. Would you report him to Mr. Dole, or would you report it to the attorney general or to anyone?

Mr. BENNETT. I would return the appraisal to Commissioner Dole.

Mr. KLUCZYNSKI. Suppose you knew, and Mr. Dole knew, that it was a shady appraisal? You heard Mr. Beasley this morning. He said they had 13 appraisers for 2,500 lineal feet, and of 13 appraisers everyone had a different appraisal, and it varied, from 18 cents a square foot, I believe, to 75 cents, which does not seem like a lot, but Mr. Beasley explained that.

But when you figure square footage into acres, it runs up into an awful lot of money.

Now, did Mr. Dole or you report to the Bureau of Public Roads or did the Bureau of Public Roads make available to the attorney general of the Commonwealth of Massachusetts what you had found?

Mr. BENNETT. I didn't find this, sir. I found inadequate appraisals.

Mr. KLUCZYNSKI. Inadequate appraisals?

Well, according to the testimony of all of the witnesses we have had here, I will be darned if I know how you got the appraisals, or the appraisers, rather.

Is there such a thing as a merit system in the Commonwealth of Massachusetts or civil service, or do you just have political appointments, and how long has that been going on?

Mr. BENNETT. Possibly——

Mr. KLUCZYNSKI. You have been there since 1957.

Mr. BENNETT. I don't know, sir. I guess it was going on before then. I don't know, sir.

Mr. KLUCZYNSKI. How did you get the job?

Was it a political appointment or——

Mr. BENNETT. No, sir. I didn't get the job through a political appointment.

Mr. KLUCZYNSKI. Oh, you had a regular test, a civil service test——

Mr. BENNETT. Yes, sir.

Mr. KLUCZYNSKI (continuing). That included a questionnaire and examination?

Mr. BENNETT. That's right.

Mr. KLUCZYNSKI. And that is how you got it?

Mr. BENNETT. I was given a job on my background.

Mr. KLUCZYNSKI. On your background? I'll agree with you, that you have got a wonderful background, but you, with your background, have you found anybody shady and you did not report them back to the commissioner or to the attorney general?

Mr. BENNETT. Maybe I can answer you this way, sir.

There were over 35 names given to Commissioner Dole, who I told were unacceptable to the Bureau, and we would not take the appraisals nor would we use the men again. And those men were removed from the list. Does that answer it, sir?

Mr. KLUCZYNSKI. That answers it. I notice here that you are handling the final vouchers and correspondence and the changes in State legislation.

Mr. BENNETT. Yes, sir.

Mr. KLUCZYNSKI. Well, according to some testimony this morning, since July 1, 1957, is that right, no vouchers have been sent in to the Federal Bureau of Public Roads? Did I understand that correctly this morning?

Mr. CONSTANDY. For the appraisal fee.

Mr. KLUCZYNSKI. Well, that is what we are talking about.

And you are the gentleman that sent the vouchers into the Commonwealth.

Is that right?

Mr. BENNETT. No sir. The vouchers come into the regional auditor. He reviews the vouchers. I don't.

Mr. KLUCZYNSKI. How come they have not come back here for payment since 1957?

Mr. BENNETT. Well, the best I can say, sir, is that as far as my excuses are concerned, even before this inquiry they were 3 years behind in presenting the vouchers.

Mr. KLUCZYNSKI. Well, not according to what I understand. As soon as the voucher is sent in here it is within 30 or 60 days that payment is made.

Mr. BENNETT. I don't know, sir.

Mr. KLUCZYNSKI. Am I right?

Mr. BENNETT. That is the auditors.

Mr. MAY. You have to understand this, as far as the appraisal fees are concerned: The Commonwealth of Massachusetts for many years has been behind in submitting vouchers.

Mr. KLUCZYNSKI. And they were—

Mr. MAY. Well, they have not submitted the vouchers yet.

Mr. CRAMER. Too many of them are crooked; that's why.

Mr. KLUCZYNSKI. There is something wrong somewhere.

Mr. BENNETT. I think there is a misunderstanding on the voucher. The voucher I was speaking of was a final voucher of payment of all right-of-ways on a particular job.

Mr. KLUCZYNSKI. I think the misunderstanding is that you do not put the proper appraisers in the proper spot.

There is such a thing as the market value. You heard the appraiser that was contacted or had been contacted by the Federal Bureau of Roads. You heard Mr. Beasley. He can make an appraisal on property. It goes according to the market value.

And here you have 13 of them making a different report. I cannot understand that.

If we were in Chicago and had one of those crooked building inspectors we would catch up with them fast. We notify the State's attorney or the attorney general or somebody, and they get after it within a week or 10 days.

Mr. SCHERER. Why don't they do the same thing with the vote counting?

Mr. KLUCZYNSKI. Now, we will not go into that. Let's not inject any politics into this.

But I really cannot understand the appraisers in the Commonwealth of Massachusetts, believe me. They pay those fellows all that money and that is stealing from the taxpayers, and that is going too far, and this committee should go into it.

Mr. CRAMER. Will the gentleman yield? I think the gentleman misunderstands it.

Mr. KLUCZYNSKI. Yes.

Mr. CRAMER. This gentleman works for the Bureau, and the Bureau has cut off payments to the State.

Mr. KLUCZYNSKI. We tried to find out when they were cut off and we could not find out.

Mr. CRAMER. I tried to find out from counsel a long time ago how much money was being withheld, but I had to read the Washington News to find out that \$5,900,000 is still being withheld by the Bureau because of the suspicions of additional fraud on moneys, right-of-way moneys, not paid as yet to the State.

And, of course, this gentleman is saying the reason it is being withheld is the Bureau has it under investigation and has had for some time. Is that not correct?

Mr. BENNETT. That's right.

Mr. CRAMER. How long ago was it that they stopped the payments in Massachusetts?

Mr. BENNETT. I don't know that, sir, but I do know that they reviewed the appraisals—the thing that alerted me was that I expected a certain number of inadequate ones in a big program like that, that I would have to return to the commissioner, and around November of 1959 that number jumped up, and at that time I had occasion to talk to Arthur Libby, who was the regional appraiser, and I told him I didn't like anything about it.

And that was in November of 1959. And right after the first of the year, why the PED was there, and there were appraisers brought in from Maine, New Hampshire, Vermont—

Mr. CRAMER. What?

Mr. BENNETT. Appraisers from those States, to review the whole thing and take a good, hard look at it.

Mr. CRAMER. And as of that time the reimbursement to Massachusetts—

Mr. BENNETT. I wouldn't know the date, sir, but at that time I was—that was the tipoff in 1959 when I started running into so many bad ones.

Mr. CRAMER. Now, how much money was withheld then? Do you know?

Mr. BENNETT. I don't know how much, sir. That wouldn't be in my—

Mr. CRAMER. They are still withholding some funds, are they?

Mr. BENNETT. As far as I know, sir.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. BALDWIN. When you notified Mr. Dole or whoever was the proper person, in the Massachusetts Department of Public Works, that a certain appraiser should not be used again, or that the Bureau of Public Roads would not allow him, did you at the same time take any action to withhold funds on a particular parcel that that man had appraised that caused you to feel that he was incompetent?

Mr. BENNETT. No, sir. I would make a report of that to the division engineer. It would be a memo to the division engineer that these men had been eliminated.

Mr. BALDWIN. And do you know what action the division engineer would take on this kind of case?

Mr. BENNETT. No, sir. I was pretty busy right at that time. I never followed it up to see what he did on that. It all came about right around the first of the year, when everything came up and all these people came in to recheck.

Mr. BALDWIN. So you do not know of your own knowledge whether any of your reports caused specific withholding on a specific parcel

that caused you to feel that an appraiser should not be reappointed?

Mr. BENNETT. No, sir, I don't know that to my knowledge.

Mr. GRAY. Mr. Chairman?

Mr. BLATNIK. Mr. Gray.

Mr. GRAY. Mr. Bennett, I am a little confused here.

I asked you earlier about these spot checks and you said you uncovered nothing in the spot checks.

Then it is brought out here that over \$5 million is being withheld. I cannot understand who caused it to be withheld if your spot checks in the field did not uncover anything.

Mr. BENNETT. Well, the spot checks that I spoke of at that time, sir, were more or less reviews for inadequacies and then in November of 1959—and then I ran into quite a few that I didn't consider acceptable under any circumstances.

Mr. GRAY. Was not this after this started, coming up in the press that there was something wrong?

Mr. BENNETT. No, sir.

Mr. GRAY. This was all aired in 1959, was it not?

Mr. BENNETT. Yes, but it wasn't aired in November of 1959 until I found it.

Mr. GRAY. But in the years of 1957 and 1958 when you were so-called spot checking—

Mr. BENNETT. Yes, sir.

Mr. GRAY. The same people, who have been before this committee, were employed all of those years, and you did not find anything in that period that was wrong?

Mr. BENNETT. No, sir, with 35 of them I was spot checking and I could jump around. I could do that for quite a while without finding it.

Mr. GRAY. The point I cannot get is why you state here that this money has been held up since 1957.

Mr. BENNETT. Oh, I didn't say the money was held up from 1957.

Mr. GRAY. That is what someone said over here, that the voucher had not been paid since 1957.

Mr. BENNETT. Oh, I don't know about the payment of vouchers.

Mr. GRAY. These were fee appraisers.

Mr. BENNETT. Sir?

Mr. GRAY. The fee appraisers.

Mr. BENNETT. Oh, no, I made a mistake if I said anything like that. No, sir.

I will say that the vouchers, the final vouchers, on right-of-way are always about 3 years late for a complete voucher to be processed through, and that was in the period of 1957.

I reviewed some vouchers against right-of-way plans that were preceded or that preceded the time when I came there, which were just coming in for payment.

Mr. GRAY. Let me put my question another way, Mr. Bennett.

Do you feel that you and the Bureau are responsible for the withholding of these funds and, if so, how did you come about recommending that they be withheld and to whom did you recommend that they be withheld?

Mr. BENNETT. I only refer to the division engineer. I can't recommend anything, sir. It is up to him.

Mr. GRAY. Well, I mean, do you feel that you or your office was responsible for any of these funds being withheld?

Mr. BENNETT. I wouldn't know. I just reported—

Mr. GRAY. I am trying to find out how you can say you uncovered nothing in your spot checks and, on the other side of the ledger here it has been testified to that we are withholding \$5 million to the State of Massachusetts.

I would like to know, so I can compliment that agency or that person for withholding funds to these unscrupulous fee appraisers.

Mr. BENNETT. I think we are in a different period of time there that we are talking about.

Mr. GRAY. Well, it has been testified that this has been going on ever since the program started, no question about that.

So what I am trying to do is nail down as to who is responsible—I mean, whom does the credit belong to for withholding these funds?

Was it your office that went out and found these things, uncovered them, and subsequently reported it to some person, would it be Mr. Dole or would it be the State attorney general or someone that caused these funds to be withheld?

Mr. BENNETT. I would say that that would be under the division engineer, sir. I wouldn't handle that at all. I would just report to him. See, I am under the general supervision of the division engineer.

Mr. GRAY. In other words, Mr. Chairman, this witness cannot say that he is responsible for uncovering any wrongdoing in the right-of-way acquisition program in Massachusetts.

Mr. MAY. Congressman, may I clarify something for the record? Some confusion exists about the withholding of funds.

You have to take two separate categories: one is the possible reimbursement to the State for those fees paid to fee appraisers for appraisals. The State has never asked for payment. Is that right, Mr. Bennett?

Mr. BENNETT. Yes, sir.

Mr. MAY. That is why that money—that is why the State has never asked for it. Now, we come to a separate category. This is the reimbursement—

Mr. SCHERER. Just a moment. Why has this State never asked for it?

Mr. MAY. I do not know why.

Mr. SCHERER. You have a sneaking suspicion, do you not?

Mr. MAY. I do not know, Congressman, why the State hasn't asked for reimbursement.

Mr. SCHERER. But you have an expert opinion, do you not?

Mr. MAY. There is another category, and that is reimbursement to the State for moneys spent in acquiring property.

Now, there came a time in January of 1960, where you or suddenly the Bureau of Public Roads began not to reimburse the State on the vouchers?

Mr. BENNETT. Yes, sir.

Mr. MAY. Are you aware of how that came about?

Mr. BENNETT. I imagine it might have come about by my discussion with Mr. Libby and Mr. Patton. I don't know.

Mr. MAY. You do not know?

Mr. BENNETT. I do not know, sir.

Mr. MAY. You are guessing. You found something in November that seemed striking to you. Other things may have happened——

Mr. BENNETT. That's right, sir.

Mr. MAY (continuing). Later on that you did not know about?

Mr. BENNETT. That's right.

Mr. MAY. But there did come a time in January 1960 where the Bureau of Public Roads began not to process the vouchers which resulted in the Bureau failing to reimburse the State for its money.

This is a whole separate area. And you are not acquainted with it, Mr. Bennett. And we will hear from witnesses that are. Is that right?

Mr. BENNETT. That's right, sir. I am not acquainted with that.

Mr. BLATNIK. Mr. Constandy.

Mr. CONSTANDY. You were reviewing the fee appraisers. Right?

Mr. BENNETT. That's right.

Mr. CONSTANDY. We have heard what you had to say about reviewing departmental appraisers.

If I understand your testimony, you were doing everything you were expected to do in the review of fee appraisers. You were doing it on a spot check basis.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. You were following the work of a particular individual——

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY (continuing). And not following a particular project?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. You would do one or two or three reviews of a particular fee appraisal until you satisfied yourself either you could leave him alone and go on with someone else or until you took some action in connection with his work, where you found it to be inadequate. Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Do I understand your testimony correctly that in the course of the years that you were there, prior to the beginning of the investigation, from May 1957 until the end of 1959, you called it to the attention of Mr. Dole, that some 35 people had work that you found to be inadequate?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Who were thereafter dropped from the appraiser list and to whom work was no longer assigned.

Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Would there have been projects on which you conducted no review whatever of anyone's appraisal?

Mr. BENNETT. It could be, sir.

Mr. CONSTANDY. Is it not clearly so, Mr. Bennett?

Mr. BENNETT. It must be.

Mr. CONSTANDY. Not that "it must be"——

Mr. BENNETT. There were too many projects. Too many projects. There were ones that I couldn't see.

Mr. CONSTANDY. There were some projects on which you conducted no review of any appraiser?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Now, when you first went to Massachusetts did you take a sample project and review all of the appraisals?

Mr. BENNETT. I did one project which was a small job down in the Swansea area. I reviewed the whole thing.

Mr. CONSTANDY. You reviewed the departmental appraisals——

Mr. BENNETT. Departmental and fee appraisals. The whole job.

Mr. CONSTANDY. You did all of them?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. And as a result of that, what did you conclude?

Mr. BENNETT. I concluded that as a result of that particular one, why, they were doing a good job at that time.

Mr. CONSTANDY. On that project?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Was that a large project or a small project?

Mr. BENNETT. It was a small project.

Mr. CONSTANDY. Did you thereafter decide that you would ignore the small projects and concentrate your review on the larger projects?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Now, those appraisals which you reviewed, what percentage of them were reviewed by you before they went to the review board?

Mr. BENNETT. Well, I used to go over practically every Friday——

Mr. CONSTANDY. No, Mr. Bennett. If you can just answer my question we will get to what you did. What percentage of the appraisals that you reviewed were reviewed prior to the submission of those appraisals to the real estate review board?

Mr. BENNETT. Well, I guess in 1959—I guess in the course of a year I reviewed about 250.

Mr. CONSTANDY. I did not ask how many, Mr. Bennett. I asked what percentage of those appraisals you reviewed before they went to the review board.

Mr. BENNETT. Oh, I guess about 3 percent.

Mr. CONSTANDY. No, you are not listening to the question.

Mr. BENNETT. I don't understand the question.

Mr. CONSTANDY. I will try and clarify it. During the course of a given year——

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY (continuing). You would review X number of appraisals?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Some of them you reviewed before they went to the review board, did you not?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. What percentage?

Mr. BENNETT. I wouldn't know, sir. I don't know that percentage, how many that I would see before they went to the board. Some I reviewed before; some after.

Mr. CONSTANDY. Right. What would you approximate was the percentage you reviewed before they went to the review board?

(There was no audible response.)

Mr. CONSTANDY. Was it half, Mr. Bennett.

Mr. BENNETT. About half, sir.

Mr. CONSTANDY. Half of them you reviewed before they went to the review board and half of them you reviewed after they came back?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. What would you give as a fair estimate of the number of appraisals, total, departmental and fee appraisals, in the course of that year?

Mr. BENNETT. About 250.

Mr. CONSTANDY. No, the total. How many appraisals were made for the department—

Mr. BENNETT. Oh—

Mr. CONSTANDY. By employees and fee—

Mr. BENNETT. By employees and fee appraisers in the course of a year?

Mr. CONSTANDY. Yes.

Mr. BENNETT. There were 3,000 takings in a year. There possibly would be, could be 10,000 or 12,000 appraisals.

Mr. CONSTANDY. If there were 3,000 parcels in a year, most of them would normally—the most any of them normally would have would be about three appraisals?

Mr. BENNETT. That's right.

Mr. CONSTANDY. Couldn't be more than nine?

Mr. BENNETT. 9,000, I am sorry.

Mr. CONSTANDY. I believe your testimony was that there were between 3,500 and 4,000 parcels taken each year.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Some of those were only below \$2,500 in value with one appraisal?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Those which were above would have had three. Correct?

Would there have been something in the neighborhood of 6,000 to 7,000 appraisals in the course of the year made for the department of public works in which there was Federal aid?

Mr. BENNETT. I would say so, sir.

Mr. CONSTANDY. On April 25, 1960, you addressed a memo to then division engineer, Mr. Hall, in which you recited the number of reviews which you had made during the preceding year, 1959.

Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Are you familiar with that?

Mr. BENNETT. Yes, sir. I have a copy here.

Mr. CONSTANDY. Would you take out your copy, please?

How many appraisals did you review in January 1959, based on the memo you submitted to Mr. Hall?

Mr. BENNETT. Six in January.

Mr. CONSTANDY. How many in April?

Mr. BENNETT. Seven.

Mr. CONSTANDY. For a high of 63 in December and 47 in November. Correct?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Now, these were the fee appraisals and you were reviewing them?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Not the departmental appraisals?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. For the year there were a total of 273 appraisals that you reviewed?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. 110 of those were done in the last 2 months, were they not?

Mr. BENNETT. Sir, that's right, sir. Concentration——

Mr. CONSTANDY. And if we can address ourselves to the first 10 months of 1959, it would be that period before which there was any suspicion that there was something wrong.

Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. That would leave 163 appraisals reviewed in 10 months, for an average of 16.3 per month.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. So it was some 6,000 to 7,000 appraisals per year. According to my calculations you would have reviewed some 2 to 3 percent of the total made. Is that correct?

Mr. BENNETT. I think so, sir.

Mr. CONSTANDY. When would you make those appraisals normally?

Mr. BENNETT. When would I review them?

Mr. CONSTANDY. Yes.

Mr. BENNETT. Normally on Fridays, because the commissioner was not in his office on Fridays. I used to review them mostly in Commissioner Dole's office.

Mr. CONSTANDY. You wouldn't go there every Friday, would you?

Mr. BENNETT. No.

Mr. CONSTANDY. Where else would you review the appraisals?

Mr. BENNETT. Well, there was no particular place you had to review the appraisals. Sometimes I would use the board room where the review board met, if that was available. Sometimes I used the auditorium.

Mr. CONSTANDY. The auditorium? How would you do that?

Mr. BENNETT. On my lap.

Mr. CONSTANDY. You would sit in a seat in the auditorium and review the appraisals from your lap?

Mr. BENNETT. No other place to do it. There wasn't any room over there.

Mr. CONSTANDY. Now, as you would commence doing your appraisal review work, were you concerned with the qualifications of the appraiser?

Mr. BENNETT. I was more concerned with the contents of the work.

Mr. CONSTANDY. Well, if we will just take the qualifications first——

Mr. BENNETT. We just heard something on qualifications. So I used to try to stick with the end product.

Mr. CONSTANDY. Did you feel that because the department of public works had accepted these people that they——

Mr. BENNETT. I did so, yes. I thought that they had checked them.

Mr. CONSTANDY. Were their qualifications, as submitted to the department, made available to you?

Mr. BENNETT. I had a list of them for a while and then I began to do it the other way, by checking it against the type of work. I had a list from Dole at one time.

Mr. CONSTANDY. The major area in which you could satisfy yourself as to the appraiser's qualifications was in the actual review of the——

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Did you have time to go out and check as he made—those things that the appraiser said in his appraisal, to find out whether they were true or correct?

Mr. BENNETT. I did sometimes, sir; yes, sir.

Mr. CONSTANDY. In the normal course of things, did you?

Mr. BENNETT. If I was working a job in an area, and there were appraisals—appraisers that would be from that area, I would try to check their place of business to see if they had a business or what they had there.

Mr. CONSTANDY. I am talking about the review of a particular appraisal.

Mr. BENNETT. As far as to go behind what he said he did, no, sir.

Mr. CONSTANDY. Did you ever?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. It wasn't possible to go out and see if what he said in his appraisal was true or correct. Is that right?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. These reviews that you made, did you review them in detail?

Mr. BENNETT. No, sir. On a spot check basis.

Mr. CONSTANDY. All right. Having selected one to do on a spot check basis did you review it in detail?

Mr. BENNETT. More or less in detail for content.

Mr. CONSTANDY. Explain that.

Mr. BENNETT. As to what approaches were used and so forth. Just content and as to the amount of value which they had put in the appraisal.

Mr. CONSTANDY. Was that a full review?

Mr. BENNETT. I didn't check all the computations; no, sir.

Mr. CONSTANDY. Well, when——

Mr. BENNETT. Reviewed it to try to get a coverage of an area, a large cover of appraisals. They were not——

Mr. CONSTANDY. You are getting into something else again.

You have an appraisal in your hand that has been submitted by one man.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. It contains certain information, does it not?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you review that appraisal that you were then reviewing in detail?

Mr. BENNETT. I would review it in detail; yes, sir.

Mr. CONSTANDY. You would?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. You would check the computations?

Mr. BENNETT. Not always; no, sir.

Mr. CONSTANDY. Well, then you didn't do it in detail, did you?

Mr. BENNETT. No, I didn't do it in detail. No, sir. No, sir, I didn't do it in detail.

Mr. CONSTANDY. Did you look to see that he had used three appraisal approaches?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Did you find that they always did?

Mr. BENNETT. Not always. They didn't always need to on a particular case.

Mr. CONSTANDY. In some cases you wouldn't—

Mr. BENNETT. They would say that they considered them and that they didn't consider that approach applicable, and I agreed with them and they used two approaches.

Mr. CONSTANDY. Were there times when they ought to have used more than one and did not?

Mr. BENNETT. There were times; yes, sir.

Mr. CONSTANDY. What did you do in those cases?

Mr. BENNETT. Usually returned them to Commissioner Dole for additional information.

Mr. CONSTANDY. And after he got them back what would he do with them?

Mr. BENNETT. He would send them to me after he got them back, and I reviewed them again to see if the information was in the appraisal.

Mr. CONSTANDY. How many times in the course of a year would that happen?

(There was no audible response.)

Mr. CONSTANDY. Remember, in 10 months you are only doing 163. Out of the 163 in that 10-month period, how many of them did you send back to Commissioner Dole, telling him that they were inadequate as to the number of approaches that they used?

Mr. BENNETT. I would say about 25.

Mr. CONSTANDY. Of the 163?

Mr. BENNETT. When I say "inadequate" I mean that they are not—it is not an unacceptable appraisal but it is—I felt that they were inadequate in the explanation of how they arrived at their figures.

Mr. CONSTANDY. So this—

Mr. BENNETT. Sometimes you would have noncompensable items in the appraisal and you return it to the man.

He would have moving costs in it. Sometimes he would have what he considered attorneys' fees. He would put an opinion in as to how much he thought it would be worth if he went to court, and all those things went back. They were sent back to the appraiser.

Mr. CONSTANDY. Twenty-five of them?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Out of 163?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Not really 163 either, is it, Mr. Bennett?

Half of the ones that you reviewed you did not review until after they had been to the review board?

Mr. BENNETT. Reviewed half of them—about half before and about half after.

Mr. CONSTANDY. If we could apply that to the 163, we are only talking about 82?

Mr. BENNETT. Right, sir.

Mr. CONSTANDY. Not much purpose served in sending it back after it has been used, is it?

Mr. BENNETT. No, the ones that I sent back are the ones that I caught before they went to the review board.

Mr. CONSTANDY. Sir, out of 82 you would have sent back 25?

Mr. BENNETT. Right.

Mr. CONSTANDY. More than—almost a third?

Mr. BENNETT. That's right, sir, for inadequate appraisals.

Mr. CONSTANDY. Did that cause you some concern?

Mr. BENNETT. Well, it did cause me some concern and subsequently, why, I got to check it more thoroughly after that.

Mr. CONSTANDY. If you had the same appraisers that you were following—

Mr. BENNETT. Sir?

Mr. CONSTANDY. If you had the same appraiser, whose work you were following, and you did two or three of his, and found that it did not seem to you that his work was adequately done, what would you do?

Mr. BENNETT. I would mark it—I would mark him on a card index that I kept that he was unsatisfactory, and I would tell the commissioner that he was unacceptable on Federal work.

Mr. CONSTANDY. When did you start keeping a card index?

Mr. BENNETT. I think, in 1959.

Mr. CONSTANDY. What part of 1959?

Mr. BENNETT. I wouldn't know. Some time in 1959.

Mr. CONSTANDY. I know, some time in the latter part of 1959, along about the fall, along about November?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. In 1957, in May, when you began, until the fall of 1959, you didn't have a card index?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. I am sure you would not want to misconstrue what you were doing during that period. You did not have a card index?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. On those occasions, from May of 1957 to the fall of 1959 when you found someone whose work didn't seem to measure up to you, you notified Mr. Dole?

Mr. BENNETT. That's right.

Mr. CONSTANDY. And Mr. Dole would do what?

Mr. BENNETT. He would return the—well, if it was inadequate he would return it for additional information that I wanted or if it was unsatisfactory entirely, and I told him that I felt it was unsatisfactory to the Bureau, why, in those cases he didn't use him again.

Mr. CONSTANDY. They are the ones that we are talking about, the people where you found in two or three cases where this man's work didn't seem to you to be adequate to the standards that were set?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Did Mr. Dole drop him from the list?

Mr. BENNETT. Yes, sir; he did.

Mr. CONSTANDY. Always?

Mr. BENNETT. I used to check back against the appraisal assignments and, as far as I know, Mr. Dole dropped him from the list because I reviewed the appraiser assignments and if the man wasn't assigned after that time, why, he was gone from the list.

Mr. CONSTANDY. Did you have occasion to be concerned with the work of Mr. William Jacobs?

Mr. BENNETT. No more so than to return inadequate appraisals to him.

Mr. CONSTANDY. How many times?

Mr. BENNETT. I returned two of them.

Mr. CONSTANDY. He had not yet reached that point where you felt you should tell Mr. Dole not to use him?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. But his appraisals left something to be desired?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Is he an exception to the basic rule then that when you found someone who two or three times submitted work which you did not feel was up to the standard, that you would ask him to no longer use him?

Mr. BENNETT. Well, I didn't think that he reached that point where he wouldn't have to be used.

Mr. CONSTANDY. Had you had conversations with Mr. Jacobs yourself wherein you told him of deficiencies in his appraisals?

Mr. BENNETT. On one occasion, when I was reviewing appraisals in Dole's office, Dole brought him out to where I was reviewing them and I gave him two of them right then and there, and told him that they were inadequate, and at that time he said he wouldn't have any more trouble and that they would have sufficient information.

Mr. CONSTANDY. Who did you tell that to? Mr. Dole or Mr. Jacobs?

Mr. BENNETT. Jacobs told that to me at that time.

Mr. CONSTANDY. What was it he told you?

Mr. BENNETT. I was reviewing appraisals in the board room, and Commissioner Dole brought Jacobs in.

It seemed that I had returned an appraisal to him. So I had one of Jacobs' appraisals there at the time, and I pointed out the inadequacies to Mr. Jacobs, and he agreed that they were inadequate and that at that time he said, "You will have no more trouble with me; I will have everything in the appraisal."

Mr. CONSTANDY. Prior to that had you had occasion to complain of Mr. Jacobs' appraisals?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. Subsequently?

Mr. BENNETT. That was around the time of 1959, when everything—about the latter part of 1959, when they moved in and I did nothing more on Jacobs.

Mr. CONSTANDY. Ever?

Mr. BENNETT. Sir?

Mr. CONSTANDY. Ever?

Mr. BENNETT. Not after that, no, sir. When the team came in I thought that they would handle that.

Mr. CONSTANDY. Let me refresh your recollection, Mr. Bennett. I hand you a card which you have given to us.

Mr. BENNETT. That's right.

Mr. CONSTANDY. This is the type of card you began to keep in the latter part of 1959 on the fee appraisers. Is that correct?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Whose card is that?

Mr. BENNETT. That's mine.

Mr. CONSTANDY. On what appraiser?

Mr. BENNETT. On Jacobs. And I have him marked "unsatisfactory."

Mr. CONSTANDY. It is not what you have. What is the date of the card?

Mr. BENNETT. 2-5-60.

Mr. CONSTANDY. February 5th of 1960?

Mr. BENNETT. That's right.

Mr. CONSTANDY. Did you make this card at the time you had the conversation with Mr. Jacobs, when you returned two of his appraisals?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. Prior?

Mr. BENNETT. I talked to Jacobs after that.

Mr. CONSTANDY. After you made up this card?

Mr. BENNETT. After I made up the card, that's right, sir.

Mr. CONSTANDY. Did you use letters to indicate the type of appraisal that you felt the man was capable of doing?

Mr. BENNETT. Yes, I did, I think. Yes, sir.

Mr. CONSTANDY. A, B, and C. Is that correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. What would A mean?

Mr. BENNETT. A would mean a man that could do practically anything, industrial, heavy industrial.

Mr. CONSTANDY. And B?

Mr. BENNETT. B would be a man who could do small businesses.

Mr. CONSTANDY. What would C mean?

Mr. BENNETT. C would be mostly residential.

Mr. CONSTANDY. Did you also grade the appraiser as to whether he was excellent, good or satisfactory?

Mr. BENNETT. Yes, I graded them that way.

Mr. CONSTANDY. When did you make up this card on Mr. Jacobs, when relative to the conversation with him?

Mr. BENNETT. This card was made up, and it was two appraisals if you look on the bottom, and at that time I thought he was unsatisfactory.

Mr. CONSTANDY. Let's not get into what the card says yet, shall we?

Mr. BENNETT. All right, sir.

Mr. CONSTANDY. All I want to know is when you made up the card, relative to the conversation that you had with Mr. Jacobs.

Mr. BENNETT. I made up the card 2-15-60.

Mr. CONSTANDY. That is not answering the question. I asked you when you made up the card relative to the conversation. Did you make up the card after you spoke with Mr. Jacobs and gave him back his two appraisals or had you made up the card before you had that conversation?

Mr. BENNETT. I will have to look at my file and see.

Mr. CONSTANDY. Go ahead. Do you have any recollection, Mr. Bennett, whether you made up this card after you had that conversation with Mr. Jacobs?

Mr. BENNETT. I made up the card, I think, after that. I think I did.

Mr. CONSTANDY. Now, normally, when you made up a card that indicated that the appraiser on whom the card was made up was unsatisfactory—

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. What did you do?

Mr. BENNETT. I didn't do anything, sir.

Mr. CONSTANDY. Normally.

Mr. BENNETT. I didn't have time to investigate the man all the way through.

Mr. CONSTANDY. Normally?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Well, what classification of cases were those that you sent to Mr. Dole and told him not to use the man any more?

Mr. BENNETT. The men that I sent to Mr. Dole, who I told not to use any more, were not appraisers.

The man did know something about appraisals. The ones that I threw out or got rid of, by going to Mr. Dole, were men that were not appraisers at all.

Mr. CONSTANDY. Not at all?

Mr. BENNETT. They were not appraisers. No, sir.

Mr. CONSTANDY. They were doing appraisal work?

Mr. BENNETT. They were trying to do appraisal work, but they were not appraisers, and they were the ones I got rid of.

Mr. CONSTANDY. You found that their work was unsatisfactory?

Mr. BENNETT. They had no basic experience at all in appraising.

Mr. CONSTANDY. You did not answer my question. Did you find that their work, as submitted to you, wasn't satisfactory?

Mr. BENNETT. Absolutely, sir.

Mr. CONSTANDY. Will you tell us how you graded Mr. Jacobs?

Mr. BENNETT. I graded Jacobs, as I did some of the others. I would keep a man on the list.

Mr. CONSTANDY. Will you tell me how you graded him? What degree of competency did you find Mr. Jacobs had?

Mr. BENNETT. I thought Mr. Jacobs could appraise, yes, sir.

Mr. CONSTANDY. What does the card say?

Mr. BENNETT. Sir?

Mr. CONSTANDY. What does the card say?

Mr. BENNETT. It says "unsatisfactory."

Mr. CONSTANDY. And what type of property did you feel he had some—

Mr. BENNETT. I had him on C property, which would be—

Mr. CONSTANDY. You had the C marked, showing that he had capacity to only do small residential properties?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. And that he could only do that unsatisfactorily?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Did you inform Mr. Dole that you did not want him to use Mr. Jacobs any more?

Mr. BENNETT. I did not inform Mr. Dole, no, sir.

Mr. SCHERER. You did not?

Mr. BENNETT. I did not, no, sir.

Mr. CONSTANDY. What does it say relative to Mr. Jacobs using the cost approach on those appraisals you reviewed?

Mr. BENNETT. He usually used a—

Mr. CONSTANDY. No, I am asking you what the card says.

Mr. BENNETT. On this he said "cost approach, no."

Mr. CONSTANDY. Income approach?

Mr. BENNETT. No. Market data, and I have it marked "poor, un-comparable."

Mr. CONSTANDY. Calculations?

Mr. BENNETT. I had no calculations on it. That's right, sir.

Mr. CONSTANDY. Corelation of approaches? There could not be any—

Mr. BENNETT. No.

Mr. CONSTANDY. You did not tell Mr. Dole not to use Mr. Jacobs in February of 1960?

Mr. BENNETT. That's right, sir.

Mr. CRAMER. Did you know Mr. Jacobs was one of the appraisers under investigation by the Bureau at that time?

Mr. BENNETT. No, sir.

Mr. CRAMER. Did you know Beasley or others were, perhaps, looking into his appraisal work?

Mr. BENNETT. I felt that the PED would turn up whatever we had on these appraisers, the project examination. I didn't think that I should get into the investigation of individual men at that time.

Mr. CRAMER. The Bureau has such an agency, right, for investigating?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. What is the name of that?

Mr. BENNETT. Project Examination Division.

Mr. CONSTANDY. Mr. Bennett, why were you making up the cards?

Mr. BENNETT. For my own benefit.

Mr. CONSTANDY. Oh, it might be of interest to you that after February 5, 1960, Mr. Jacobs, whom you graded qualified only to do small residential properties, and those unsatisfactory, was, according to the records of the Bureau of Public Roads, assigned a total of 23 more parcels to appraise, for an assignment fee of \$8,350 subsequent to the time you made up your card.

Do you think he might not have been one of the people appropriate to mention to Mr. Dole, that he was not qualified?

Mr. BENNETT. He could have been, sir.

Mr. CONSTANDY. Mr. Jacobs had gotten more assignments than anyone else in the State.

He has been paid more money to do appraisals for the department of public works than anyone else in the State. He had appraised very substantial, complex, expensive industrial and commercial properties, and you have him graded as being only qualified to do small residential properties and those unsatisfactory.

Fifty percent of those that you reviewed you reviewed after they went to the Review Board. Is that correct?

Mr. BENNETT. That is right, sir.

Mr. CONSTANDY. Is "review" the proper word or were you looking at them for some other purpose?

Mr. BENNETT. I wanted to see what determination the Review Board had made of them.

Mr. CONSTANDY. Well, were you performing a review of those appraisals which had already been to the Review Board?

Mr. BENNETT. I was reviewing mostly what they had—

Mr. CONSTANDY. Well, are we playing with the word "review," Mr. Bennett?

Mr. SCHERER. I think Mr. Constandy is doing an excellent job—
Mr. CONSTANDY. Thank you, Mr. Scherer.

Mr. SCHERER. But I think he is too tough on this witness. He has not been this tough on some of the boys that obviously committed fraud. I would not want to leave the impression that we felt that this witness had—oh, go ahead.

Mr. CONSTANDY. Mr. Scherer, I would be the last one to want to leave the impression that Mr. Bennett participated in or was, in any way, connected with any wrongful act in the State of Massachusetts.

We certainly have no indication of it, but we do very clearly want to point out the degree to which those controls that were employed by the Bureau of Public Roads in Massachusetts, and the other States in the United States were effective in being able to catch the things that we are talking about.

Mr. Bennett has testified that 50 percent of those appraisals which he reviewed, he reviewed after they had been to the Review Board.

He testified that he only reviewed a total of 2 to 3 percent of those parcels taken. That means that Mr. Bennett only reviewed $1\frac{1}{2}$ —1 or $1\frac{1}{2}$ percent of the appraisals.

Massachusetts has spent \$84 million—

Mr. SCHERER. I understand that, but this witness did not set up those procedures.

Mr. CONSTANDY. No, he was charged with the responsibility of seeing that the appraisals were adequately reviewed.

Mr. CRAMER. How many people did you have working in this department to review appraisals?

Mr. BENNETT. In my department?

Mr. CRAMER. Yes.

Mr. BENNETT. I was by myself. Nobody. I didn't even have a secretary.

Mr. CRAMER. Was there not anybody else assigned by the Bureau to review appraisals?

Mr. BENNETT. No, sir. I was the only one.

Mr. CRAMER. And before you were employed they had nobody. Is that right?

Mr. BENNETT. That's right, sir.

Mr. CRAMER. Before the 1956 act went into being?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. And that was part of your function?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. You were not working full time to review appraisals?

Mr. BENNETT. My job description calls for those other things that I mentioned that I did, and I had to do those too.

Mr. CRAMER. Is that the reason why you did not review any more than you did? You did not have time or what? You did not have personnel or what?

Mr. BENNETT. Well, I was, as I say, I was by myself.

Mr. SCHERER. That is just what I mean.

Mr. CRAMER. Well, that is the point. I am trying to find out what manpower he had to work with to do these reviews.

I do not say it is right particularly that they had as few people as they did, but, having what they had, I think he is entitled to explain. How many do they have now?

Mr. BENNETT. We have five positions, four of them filled and we have a full-time secretary now.

Mr. CRAMER. And how long has that been in being? When did you get some help for the first time?

Mr. BENNETT. I think about 2 months before Christmas—we——

Mr. CRAMER. I do not say that that is good now. I think the Bureau of Public Roads undoubtedly should have had more people in Massachusetts, and I do not know whose fault that is.

Whether the Bureau asked for it from Congress and did not get Congress to give them the money; or whether they did not ask for more people; or whether they were just fooling around on this program and did not know exactly how many more people they needed; or what the story was; I do not know.

But the fact is that you had one person for a number of years and when did you get additional personnel?

Mr. BENNETT. I was superseded in my job by a member of the PED team in June of 1960, and that was the first person in the right-of-way department——

Mr. CRAMER. When they started investigating is when you got more personnel?

Mr. BENNETT. That's right, sir.

Mr. CRAMER. So if they had not been investigating you might still be sitting there with one man doing the job, all by yourself?

Mr. SCHERER. Another thing, Mr. Cramer, in reviewing these appraisals, a man in reviewing them must rely to some extent on the information that is before him.

He would have to assume that the people who were making the appraisals or making the reports were at least basically honest; otherwise, he would have to do the whole appraisal over again, would he not?

Mr. CRAMER. I understand that.

Mr. SCHERER. I mean, you cannot expect the reviewer—he has got to rely on some information before him as at least coming from somebody that is reasonably honest; otherwise, you are going to do two appraisals.

Mr. CRAMER. I realize that, and the result would be if you went behind all of the appraisals you would have to duplicate the State's work. Right?

Mr. BENNETT. Right, sir.

Mr. CRAMER. I do not think anyone completely duplicates another's work or the State might as well do it the first time. Is that right?

Mr. BENNETT. That's right.

Mr. CRAMER. How many people in the State department of public works did you have the duty to review their work? How many people were you reviewing?

Mr. BENNETT. Fee appraisals, sir?

Mr. CRAMER. Whatever your duties were.

Mr. BENNETT. They used, I guess, maybe a hundred different fee appraisers and——

Mr. CRAMER. And how many departmental appraisers?

Mr. BENNETT. That would vary. There might have been about 25. Sometimes a negotiator would appraise and sometimes an appraiser would negotiate, as they manipulated their personnel. So that——

Mr. CRAMER. I think "manipulation" is a good word.

Mr. BENNETT. Sir?

Mr. CRAMER. I think "manipulation" is a very well chosen word. So you had about 25 within the department and about 100 appraisers outside?

Mr. BENNETT. That's right.

Mr. CRAMER. And you were one man, reviewing what they did on the 3,500 or 4,000 parcels a year. Is that right?

Mr. BENNETT. That's right, sir.

Mr. SCHERER. You could catch irregularities that appeared on the face of the documents submitted to you, could you not?

Mr. BENNETT. That's exactly right, sir.

Mr. SCHERER. But you could not catch misrepresentations of fact that appeared on those documents?

Mr. BENNETT. No, sir.

Mr. CRAMER. Well now, during the period that you were working the State did not find these things, did they? They claim they did not, and they had hundreds of people looking into it. They did not find these irregularities, did they, when you were working there?

Mr. BENNETT. No, sir.

Mr. CRAMER. Did you have any evidence on the part of the State that they found any of these irregularities?

Mr. BENNETT. No, sir.

Mr. CRAMER. Did they find that Jacobs was a bad appraiser?

Mr. BENNETT. No, sir.

Mr. CRAMER. Did the review board call to your attention or did you see in their deliberations any indications that they thought the appraisals were bad?

Mr. BENNETT. No, sir.

Mr. CRAMER. And they had all these people looking into it and they did not find it?

Mr. BENNETT. That's right, sir.

Mr. CRAMER. That is all.

Mr. CONSTANDY. Did there come a time, Mr. Bennett, when you became concerned with the appraisals submitted in connection with the Deb Realty property?

Mr. BENNETT. The Deb Realty is a junk yard out in Gardner, and at that time I reviewed two appraisals in which I thought they were absolutely no good at all. And at that time I asked Commissioner Dole to get a third appraisal.

Mr. CONSTANDY. Did he?

Mr. BENNETT. He did; yes, sir.

Mr. CONSTANDY. And was the third appraisal reviewed by you?

Mr. BENNETT. No, sir, not at that time. No, sir.

Mr. CONSTANDY. I thought the first two were good. You reviewed those?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. The third one was submitted and you did not review that?

Mr. BENNETT. I never got back to it, sir.

Mr. CONSTANDY. All three appraisals go to the review board?

Mr. BENNETT. I do not know, sir.

Mr. CONSTANDY. We know. They did. They did. You, yourself, just said that you reviewed two appraisals which you thought were no good.

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Both of those appraisals did, in fact, go to the review board together with a third one which was gotten on your request.

I would like to point out that the third one you got was substantially lower than the other two that you were suspicious of.

One of them that we are talking about was the appraisal of Mr. Barca for \$247,800, which Mr. Lonzo testified when it left him was only in the neighborhood of \$160,000.

Mr. BENNETT. Right, sir.

Mr. CONSTANDY. Now, here we have a case where on the surface you were concerned. You discovered something which, perhaps, was indicative of a bad appraisal, to say the least.

Did you go to Mr. Dole and tell Mr. Dole that the two appraisals that you thought were no good should be reviewed and no more work assigned to those two men?

Mr. BENNETT. No, sir, I didn't, at that time.

Mr. CONSTANDY. Did you know the two appraisals, that went to the review board, were something in excess of \$100,000 more than the third one?

Mr. BENNETT. At that time, sir, I didn't go back of Barca or the other man that reviewed them. I didn't think the appraisals were adequate.

I thought they were way out of reason, and I knew that there was a State appraisal in there, and I figured if I got a third appraisal in there, which would be somewhere near the figure, that the board of review would make a determination.

Mr. CONSTANDY. They did, and they gave weight to the two appraisals that you did not think were any good.

Did it accomplish any purpose in discovering that Mr. Barca and another had submitted appraisals which you felt were no good?

Mr. BENNETT. I thought it did at the time.

Mr. CONSTANDY. To the extent that it caused them to get a third appraisal?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. They still affected the value that the review board set. And now, soon after you arrived in Massachusetts did you become troubled about certain cases which were being submitted to the attorney general's office?

Mr. BENNETT. I did, sir.

Mr. CONSTANDY. Who was the attorney general?

Mr. BENNETT. Max Rosenblatt.

Mr. CONSTANDY. He was the assistant?

Mr. BENNETT. Assistant attorney general in charge of the right-of-way section.

Mr. CONSTANDY. Was one of the things that troubled you the fact that you were not receiving the transcripts of the proceedings at the trials in court?

Mr. BENNETT. Well, I had never run into anything like that on appraisals before—I mean, on attorney general cases before and I didn't like it at all. I didn't like the setup on it.

Mr. CONSTANDY. I only asked you whether you were concerned with the fact that you did not have an opportunity to inspect the transcripts of the court proceedings.

Mr. BENNETT. That was one of the features; yes, sir.

Mr. CONSTANDY. It was the other feature, the fact that the settlement made by the assistant attorney general was in excess of the review board figure——

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Is it not a fact that the Bureau of Public Roads will participate in the awards made up to the review board figure? Is that correct?

Mr. BENNETT. That is recent. Yes, sir.

Mr. CONSTANDY. No, it has always been so, has it not? The Bureau——

Mr. BENNETT. Well, I mean, as far as the Bureau or the review board's figure, when they cannot settle under that figure, then they go to the attorney general——

Mr. CONSTANDY. I only asked you whether the Bureau of Public Roads would participate in those settlements up to the review board's figure.

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. And——

Mr. SCHERER. Somebody in the back of the room—I do not know who he is—is shaking his head “No, No, No.” Evidently he is with the Bureau of Public Roads.

Mr. CONSTANDY. I think it is fairly well established, Mr. Bennett, if I can restate it, that the Bureau of Public Roads would participate, other things being all right——

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY (continuing). On a figure which was not in excess of that figure set by the review board. Correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. The Bureau of Public Roads also has a provision where they will participate in a sum above the review board figure if there is sufficient documentation of the excess value over the review board figure. Is that not correct?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Now, that may come about as the result of a court order. Is that true?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Did you have a court award which—if you have a court award, which is in excess of the review board figure, the Bureau of Public Roads will participate in the court award?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Now, some of the cases were being disposed of in the attorney general's office without trial, but with the settlement being above the review board figure, but that figure, that they settled the cases at, was the judgment of the court. Is that correct?

Mr. BENNETT. That's right, sir.

Mr. CRAMER. So now, do you have any jurisdiction, or do you exercise any, to check into what evidence is submitted to the court and the basis for the decision?

Mr. BENNETT. On a pro forma hearing, sir, I have accumulated over 475 of them.

Mr. CRAMER. Do you review the appraisals that are turned over or that are used and submitted as evidence to the court?

Mr. BENNETT. If what is submitted in evidence to the court should be known as a pro forma hearing I would get copies of those hearings, sir.

Mr. SCHERER. You mean by "pro forma hearing" there was actually no contest. The attorney general would go before the judge, together with counsel for the landowner, and they would make a statement to the court and submit a little evidence?

Mr. BENNETT. That is it, sir.

Mr. SCHERER. They really stipulated to an agreement which they had already arrived at?

Mr. BENNETT. That was my impression.

Mr. CRAMER. They would take the appraisals that they had available and come to some agreement between the property owner and the Government as to what it was worth and supply it to the court for approval without trial. Is that it?

Mr. BENNETT. Yes, sir.

Mr. SCHERER. And some of those were pretty bad, were they not?

Mr. BENNETT. I thought so.

Mr. CONSTANDY. Rather than leave the impression that Mr. Rosenblatt was doing something less than what was appropriate or proper, the Bureau of Public Roads would participate in that figure from a pro forma proceeding as long as the assistant attorney general satisfied the requirements of the court and the figure that came out was a finding by the court. Is that correct?

Mr. BENNETT. That is right, sir.

Mr. CRAMER. Well, was Rosenblatt the only one that was assistant—

Mr. CONSTANDY. Yes, at that time, that is true.

Mr. SCHERER. The same thing, I understood, happened when other persons were in charge of the—

Mr. CONSTANDY. There are things which take place chronologically subsequent to this time that Mr. Bennett went to Massachusetts which, I think, resolved to a considerable extent the question of whether the Bureau of Public Roads can properly participate in those full pro forma settlements.

The question that was raised is whether the—

Mr. SCHERER. Wait a minute. When you say "participate" what do you mean by that?

Mr. CONSTANDY. The Federal funds would apply in the same manner as they would apply in a case which had been settled for either the review board figure or below.

Mr. BALDWIN. Let me raise a point here—

Mr. KLUCZYNSKI (presiding). Just a moment. The chairman is still in control of this hearing. Get permission from the Chair first. Are you going to yield?

Mr. CRAMER. Yes.

Mr. KLUCZYNSKI. Mr. Cramer will yield to the gentleman from California.

Mr. BALDWIN. Mr. Constandy, as I understand the Massachusetts procedure, the landowner brings his suit against the State to determine the proper evaluation of the property that is being taken by the State. Right?

Mr. CONSTANDY. That is my understanding, yes, sir.

Mr. BALDWIN. So the two parties at interest are the State of Massachusetts, which is acquiring the right-of-way, and the landowner of the right-of-way?

Mr. CONSTANDY. That is correct.

Mr. BALDWIN. So the settlement which the court is deciding legally is between two parties, the State of Massachusetts and the landowner. The Federal Government is not condemning the property. The Federal Government does not condemn the property. The State of Massachusetts is taking the property.

So the only two parties in a suit in the State court is the State of Massachusetts and the landowner. That is the only thing that could be done under the law. I was here when we drew up the law.

Mr. SCHERER. Mr. Chairman——

Mr. KLUCZYNSKI. Does the gentleman yield to the gentleman from Ohio?

Mr. CONSTANDY. I do not question that, Mr. Baldwin.

Mr. CRAMER. I yield to the gentleman.

Mr. KLUCZYNSKI. The gentleman from Ohio.

Mr. SCHERER. Following what the gentleman from California said, Mr. Chairman, is it not a fact that when the court entered a judgment, as the result of a pro forma hearing, it was then that the Bureau of Public Roads had to contribute its proper share to the settlement?

Mr. CONSTANDY. That is correct. You put your finger right on it, Mr. Scherer.

Mr. SCHERER. But the Bureau of Public Roads had nothing to say with reference to the settlement that was reached between the attorney general and the counsel for the property owner.

Mr. CONSTANDY. No, no more than they would have to say that the settlement was reached by negotiation for a figure below or at the Review Board figure.

Mr. SCHERER. And if that negotiation between the attorney general and the counsel for the property owner was made in bad faith or was an irregular settlement or if improper evidence was presented to the court, the Bureau of Public Roads would have no control over that.

Mr. CONSTANDY. Well, I would not suggest that that was a settlement——

Mr. SCHERER. Well, I understand there was in certain cases.

Mr. CONSTANDY. Well, you, perhaps, have information that is not otherwise available to us, Mr. Scherer.

But at this moment, the issue concerning Mr. Bennett at the time he became concerned, was whether that finding by the court was sufficient to conform with the Federal Bureau's requirements; that without a trial that figure became a judgment of the court. If it was a judgment of the court——

Mr. SCHERER. But I am not accusing the attorney general of any improper conduct, but if the attorney general, when he entered into this pro forma settlement with the property owner, acted unwittingly on information that was fraudulent or false, the judgment of the court would not be consistent with actual or true values, would it?

Mr. CONSTANDY. I beg your pardon?

Mr. SCHERER. Does not your investigation disclose that there were some cases in which the attorney general made a recommendation for

a settlement in a pro forma hearing, and that the recommendation was based on improper or fraudulent information in his files with reference to value?

Mr. CONSTANDY. Does that imply knowledge on the part of the assistant attorney general, as you set it forth?

Mr. SCHERER. Well, that is something to be evaluated after we hear some more evidence. He may have acted on it not knowing that his evidence was faked?

Mr. CONSTANDY. Well, since it is a hazardous area I, for one, intend to remain outside of that area and confine my discussion with Mr. Bennett on the legal question as to whether the judgment of the court was sufficient to enable the Federal Government to participate.

Mr. SCHERER. We have passed that point, and I think we have all agreed that it was and that the Bureau of Public Roads was bound by it.

Mr. CONSTANDY. Yes, of course——

Mr. SCHERER. That is, that the Bureau is bound by that judgment.

Mr. CONSTANDY. Yes, if false appraisals were submitted to Mr. Rosenblatt and did not appear false on the surface, and he had no other knowledge of it, he, of course, is bound by that evidence which has been submitted to him in the preparation of his case for trial.

Mr. SCHERER. That is right, but if, on the surface, or if it appeared from an examination of the file that the information submitted to him was erroneous, the Attorney General would then have a duty to make an investigation of his own, would he not?

Mr. CONSTANDY. But I think, Mr. Scherer——

Mr. SCHERER. Answer my question now. Now, you have been asking the witness to answer your questions, now you answer mine. Would he not be bound to make an investigation of it since he is attorney general of the State?

Mr. CONSTANDY. I do not know.

Mr. SCHERER. Well, surely, he would.

Mr. CONSTANDY. If it is apparent on the face of it, I am sure he would.

Mr. CRAMER. Sure.

Mr. Chairman, will the gentleman from Ohio yield?

Mr. SCHERER. Yes.

Mr. CRAMER. To get the record straight now, who was the assistant attorney general during this period that this gentleman was with the Bureau?

Mr. CONSTANDY. The point that we are talking about——

Mr. CRAMER. I asked during the period he was employed.

Mr. BENNETT. Mr. Rosenblatt.

Mr. CRAMER. And who was after him?

Mr. BENNETT. Mr. Lyons.

Mr. CRAMER. During what period were Mr. Rosenblatt and Mr. Lyons assistants?

Mr. BENNETT. Mr. Rosenblatt was there when I came, and I think he was there at least for 4 years—3 or 4 years.

Mr. CRAMER. Then when did Mr. Lyons come?

Mr. BENNETT. Right after Mr. Rosenblatt.

Mr. CRAMER. I know that, but when?

Mr. BENNETT. I don't know the time when the election changed it. I really don't know.

Mr. CRAMER. Around 1958?

Mr. BENNETT. Something like that.

Mr. CRAMER. Or January 1959?

Mr. BENNETT. Yes, sir, I think so.

Mr. CRAMER. And you did not have a duty to participate in any way in the court case itself or to review the court case?

Mr. BENNETT. No. My only—my only thought at that time to clear this up was, were these stipulated settlements or were they judicial decisions.

Mr. CRAMER. And then what was your action in each case? Let's assume it was stipulated. What did you do?

Mr. BENNETT. I had—I reported that to the division engineer and at that time he had people come from Washington to review these cases and they did review them with Rosenblatt in a meeting, and Rosenblatt at that time said that he would make a finding and report to them as to whether they were stipulated settlements or judicial decisions.

And later on, why, it was forwarded to Washington and they determined that on the basis of what Mr. Rosenblatt had presented, that they were judicial decisions.

Mr. CRAMER. In other words, this is the area—let me just clear up this point—this is the area where it was decided by the Bureau and the State of Massachusetts that a settlement in court, pro forma, was a judicial decision and, therefore, it was one that the Bureau would pay. Right?

Mr. BENNETT. That is exactly right, sir.

Mr. SCHERER. And under the law the Bureau was bound to pay it if it was a judicial decision. The crux of this thing is that these judicial decisions were based upon fraudulent appraisals.

Mr. CRAMER. Upon fraudulent appraisals.

Mr. SCHERER. And what I am saying, from some of the things that I have heard, is that any lawyer examining his file should have seen, in many of these cases, that they were fraudulent appraisals and should, since he is the attorney general of the State, make some investigations on his own.

Mr. CONSTANDY. Mr. Bennett, did you find on their face that these appraisals that you looked at were fraudulent?

Mr. BENNETT. Which ones, sir?

Mr. CONSTANDY. The ones we are talking about.

Mr. BENNETT. The ones we are talking about? No, sir, I didn't at that time. I didn't go into them.

Mr. CONSTANDY. Did you become aware of certain cases which have gone to the attorney general's office and had been settled pro forma by Mr. Rosenblatt—

Mr. BENNETT. I knew of cases that he had settled. Yes, sir.

Mr. CONSTANDY. Did you secure the appraisals on those cases and look at them?

Mr. BENNETT. No, sir. The appraisals—the appraised amounts are, always in a pro forma hearing—

Mr. CONSTANDY. I am talking about the appraisals themselves.

Mr. BENNETT. No, sir, I did not. No, sir, I didn't.

Mr. CONSTANDY. You don't know whether the appraisal information submitted to Mr. Rosenblatt was false or not?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. At this meeting that you made reference to, were you present?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Was there someone present from the department of public works?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Several people?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Was Mr. Rosenblatt present?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. And who was there from the Bureau of Public Roads, in addition to yourself?

Mr. BENNETT. Mr. Enfield and Mr. Phillips.

Mr. CONSTANDY. Mr. Enfield was serving in what capacity at that time?

Mr. BENNETT. General counsel.

Mr. CONSTANDY. And Mr. Phillips?

Mr. BENNETT. Head of the right-of-way division.

Mr. CONSTANDY. The purpose of this meeting was to resolve the question which you posed.

Mr. Rosenblatt called to the attention of the people who were present that he felt that the appraisals were being submitted to him—which were being submitted to him were no good?

Mr. BENNETT. I think there is a report of that meeting, sir, yes.

Mr. CONSTANDY. In his opinion, at that meeting, it was that there were unqualified appraisers being given the work?

Mr. BENNETT. That was the meeting, yes, sir.

Mr. CONSTANDY. Did he complain that he could not be expected to try cases on appraisals that were to that time, made by people who were incompetent and unqualified?

Mr. BENNETT. Yes, sir.

Mr. SCHERER. That is the very thing I am talking about.

Mr. CONSTANDY. It is. It becomes important, Mr. Scherer, because at that time—and this is the fall of 1957—Mr. Rosenblatt, acting in the capacity of assistant attorney general, probably becomes more aware than anybody else, since he is the man who now has to take these appraisers and appraisals and put them to the test of cross-examination in a trial, that they were no good.

The appraisals were no good and the appraisers were incompetent.

Mr. SCHERER. That is just what I am saying. From the examination of a file in some of these cases any attorney looking at them ought to determine these very things that you state were wrong.

Mr. CONSTANDY. Yes. I think that Mr. Rosenblatt will be able, when he appears, to help us out in that.

The point is, too, that in the fall of 1957 there was, addressed to those people present at that meeting, the opinion of Mr. Rosenblatt that the appraisals, those that were coming to him, in the attorney general's office, were no good; the people making them were incompetent and not qualified to make appraisals, and yet the resolution of this matter made no reference to the inadequacies of the appraisals

themselves, but addressed itself on to whether the Federal Government could participate in the court judgment.

It was left unanswered, what would be done in the fall of 1957, when the appraisers that were being assigned the work, who were incompetent, who were submitting appraisal reports that would not withstand the test of cross-examination at trial—that was left unanswered.

Mr. SCHERER. And the pro forma judicial settlements continued to be made even after Rosenbloom, or whoever he was, recognized that such a condition existed.

Mr. CONSTANDY. Yes, and——

Mr. SCHERER. And settlements continued to be made on the basis of those false appraisals.

Mr. CONSTANDY. That is true, but it is unfortunate at that time there was not proper recognition given to those things that Mr. Rosenblatt had to say, which related to the incompetency of the appraisers.

More important than whether the Federal Government should participate in the pro forma finding, was the fact that there was an indication now, in the fall of 1957, that things were very wrong; that appraisers were being assigned who were not qualified to make them, and they were submitting reports which, on their face, were inadequate.

And yet there was nothing done in the fall of 1957 about that problem. That is the problem that concerns us here.

Mr. SCHERER. And since the attorney general is the chief law enforcement officer of the State of Massachusetts, did he move forward against these appraisers, these fraudulent appraisers? That is what I am complaining about.

Mr. CONSTANDY. I do not believe that Mr. Rosenblatt's contention at that time was that these were fraudulent.

He raised a question as to their qualifications, the qualifications of the appraisers and the competency of the appraisers, and the adequacy of the reports.

Mr. SCHERER. But the fact is that from 1957 to date the State of Massachusetts never made an investigation to determine whether or not these appraisals were fraudulent or to determine whether or not the situation was as we now find it to be.

Mr. CONSTANDY. Yes, and——

Mr. SCHERER. And they continued to make settlements in court and gave the sanction of a judicial finding, based upon false information. That is what I am complaining about. You do not disagree with me that that did happen?

Mr. CONSTANDY. There was no issue raised on fraud at that time or any time until 1960, the beginning of 1960.

I do agree with you, and I think it is unfortunate it was not recognized by those people having the responsibility for it, that the appraisals being performed for the department of public works were as inadequate as they were.

Had that been recognized then it may never have reached the point that we have a hearing on it today.

Mr. SCHERER. But it is the attorney general's job, when he himself recognizes it, to proceed with an investigation, because he is the keeper of the conscience of every State official in the State of Massachusetts.

MR. CONSTANDY. As these facts relate to Mr. Rosenblatt, perhaps he can give his opinion on those things when he appears.

MR. CRAMER. When is he going to appear?

MR. CONSTANDY. Tomorrow. Was there also a problem of the competency of appraisers as witnesses?

MR. BENNETT. Yes, sir. There were three in Worcester in which they would not appear in court to support their conclusions of value, and those three, I told Commissioner Dole would not be allowed to be used on any Federal work at all; nothing at all.

MR. CONSTANDY. Did that come about at that time or did that come about some time later?

MR. BENNETT. No, that was way around 1959; early 1959 or middle of 1959.

MR. CONSTANDY. In January of 1959 there was, in fact, a new attorney general, was there not, elected?

MR. BENNETT. Yes, sir.

MR. CONSTANDY. What steps did you take at that time as to the problems of eminent domain with the attorney general's office in January of 1959?

MR. BENNETT. Well, at that time, why, I asked the attorney general to give me charge—to poll—I don't know whether you are aware of this, but to poll all of his assistant attorneys general and to see—to give me a list of the ones that he didn't think—the appraisers that he didn't think were any good in court.

MR. CONSTANDY. Did he?

MR. BENNETT. He did, sir.

MR. CONSTANDY. Did he thereafter, at intervals, give you the names of people whom he felt ought not to be used?

MR. BENNETT. He went through a list of men which he had been using in an area, and he agreed then as to a good man in court, unused, or so forth and so on, based on the list that the DPW was using at the time.

MR. CONSTANDY. Who was it that was doing that, Mr. Bennett?

MR. BENNETT. Sir?

MR. CONSTANDY. Who was it that was doing that?

MR. BENNETT. Mr. Lyons did that for me.

MR. CONSTANDY. Mr. Lyons?

MR. BENNETT. He polled all of his assistant attorneys general to see if these men were qualified to appear in court.

MR. CONSTANDY. And did that result in elimination of certain fee appraisers?

MR. BENNETT. Certain fee appraisers were eliminated at that time by the State itself.

MR. CONSTANDY. Because they were unqualified?

MR. BENNETT. Yes, sir.

MR. CONSTANDY. Did you, after the election and the arrival of the new attorney general, request permission of Mr. Hall to have a meeting with the attorney general—

MR. BENNETT. Yes, sir.

MR. CONSTANDY. Or someone on his staff and discuss your mutual problems?

Mr. BENNETT. Yes, I talked to, I had a meeting with Commissioner Dole and Mr. Lyons, and at that time, why, we discussed the Bureau of Public Roads' policy and procedure, and I gave him copies of the memorandum.

Mr. CONSTANDY. Do you want to take this, Mr. Bennett?

It is a memo, dated February 26, 1959, from you to Mr. Hall, and it is your monthly report on right-of-way procedures for February 1959. And in it you relate actions taken during this month.

Would you read the memo that you wrote at that time?

Mr. BENNETT (reading) :

A meeting was held in Commissioner Dole's office at the Department of Public Works February 11, 1959.

Attending were Commissioner Dole, who handles right-of-way matters; Mr. John Riley, liaison man between the Department of Public Works and the attorney general's office, Mr. Herbert Dodge, representing the State right-of-way department, Mr. Joseph Lyons, assistant attorney general in charge of the eminent domain section of the attorney general's office and A. T. Bennett, division appraiser of the Bureau.

Mr. Lyons was given six copies of Policy and Procedure Memorandum 21-4.1 (1) which defines State acquisition under Federal-aid procedures. We agreed, that after a study of these procedures by Assistant Attorney General Lyons and his staff, the Bureau would be available to discuss any questions with the attorney general. Transcripts of court cases before a superior court judge which were previously furnished by the former assistant attorney general, will be continued under the present attorney general.

Arrangements were made that notification of jury trials would be given the Bureau so that observation by attendance would be arranged if we so desired.

We agreed that it might be advantageous to try more cases before a judge and jury than had been the practice of the former attorney general.

We discussed several large cases that were left by the former attorney general that will soon come to trial. Suggestions were offered to the attorney general about certain points that we thought merited his consideration when these cases are prepared.

Agreement was reached that the former practice of the previous attorney general's office of hiring their own appraiser when it was felt necessary because of uncertainty about existing appraisals, would be discontinued. Any additional appraisal considered necessary before going to trial, will be referred to Commissioner Dole and the department of public works' right-of-way department for the selection of the appraiser. The attorney general agreed that the right-of-way department and the commissioner are better qualified to select the right appraiser for the job.

We agreed to cooperate fully as a partnership to expedite the acquisition of Federal participation in rights-of-way.

Mr. CONSTANDY. That is the only part that applies to this particular point. At that meeting there were different items generally discussed.

You acquainted Mr. Lyons with the Bureau's policies and procedures, and he had consented to give you notice of jury trials in advance in case you wanted or could be present.

Mr. BENNETT. That's right.

Mr. CONSTANDY. It was an agreement that more cases would be tried by jury, wasn't there?

Mr. BENNETT. I think there were, sir.

Mr. CONSTANDY. Did you discuss certain large cases that were left over?

Mr. BENNETT. Pending cases, yes, sir.

Mr. CONSTANDY. And it was agreed by Mr. Lyons that thereafter, if an additional appraiser is needed that that additional appraiser would not be secured by the attorney general's office but would, rather, be secured, as the earlier ones had been, by Commissioner Dole?

Mr. BENNETT. That is right, sir.

Mr. CONSTANDY. Now, this is a good step, Mr. Bennett, and I want to disabuse the record, if such impression was left, that I am critical of you.

It is not my function to be critical of you. There are certain things that we can recognize. When you went there it was a fact that the Bureau of Public Roads had just recently adopted the procedures that you were there to inspect.

Mr. Ellis was, and is, an eminent man in the field. You had done those things that your time allowed you to do in the many areas in which you had to work.

You were on the staff. You were there by yourself. Is it correct that in 1958 a request for an additional man to assist you was made?

Mr. BENNETT. That is right, sir.

Mr. CONSTANDY. And was the man found and assigned to assist you?

Mr. BENNETT. No, sir.

Mr. CONSTANDY. Was it not true that in March and April, for a period of some 3 weeks, the Projects Examination Division team of some men, were assigned to Massachusetts to make a normal, routine audit and inspection of the practices of the Massachusetts Department of Public Works?

Mr. BENNETT. Yes, sir.

Mr. CONSTANDY. Is it not true that thereafter you received no word that they had found anything wrong either from the regional right-of-way engineer or from your immediate superior, Mr. Hall, the division engineer?

Mr. BENNETT. That's right, sir.

Mr. CONSTANDY. Now, you and I went over the amount of time that you spent and each thing that you did, and I do not know whether you totaled them up or not but, according to the figures you gave me, you were working about 8 days a week.

I do not want it to appear on the record that there was any criticism, Mr. Bennett, that you shirked your responsibilities there, because you were lazy or incompetent or indifferent.

The information we have and, to a large extent, comes from copies of memos in the files that you yourself maintained is that you yourself were busy. We can appreciate that.

We can appreciate, too, that you did, on various occasions make various improvements, but there were significant improvements made by you being assigned to that job which resulted in saving money for both the State and the Federal Government.

You initiated a change of relationship at this time with the attorney general's office, which led to the attorney general supplying reports to you as to the progress that was being made.

It brought you in contact with him and enabled you to make suggestions to the attorney general's office to more readily accommodate situations where there were problems that were apparent to you.

Mr. Chairman, I would like to submit Mr. Bennett's April 25 memo to Mr. Hall as exhibit 28-A, Mr. Bennett's card or Mr. Jacob's as exhibit 28-B, and Mr. Bennett's February 26, 1959, memo to Mr. Hall as exhibit 28-C.

Mr. BLATNIK (presiding). Without objection, it will be so ordered. (The documents referred to were marked "Exhibits 28-A through 28-C," respectively, and will be found in the files of the subcommittee.)

Mr. CONSTANDY. I have no further questions, Mr. Chairman.

Mr. CRAMER. Mr. Chairman, I just have one brief question.

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. This recommendation that was made at this meeting, referred to in your memorandum, to your knowledge, was it the practice to ask for new appraisers?

Do you know of any cases in which outside appraisers were asked by—

Mr. BENNETT. By the attorney general? Yes, sir, he did ask for them at that time.

Mr. CRAMER. Do you know what percentage of cases or how often such requests were made?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. Well, you know he did it or you do not know how often or what cases or otherwise?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. He had the two available to use at this meeting. Right? He could have requested—

Mr. BENNETT. Yes, sir.

Mr. CRAMER. Appointment by the commissioner?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. Prior to that time, of course, the attorney general himself made or appointed the appraisers?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. And the new feature was that now the Bureau would make the appointments. Right?

Mr. BENNETT. No, the selection of the appraisers, I thought, would be better left to the department because—

Mr. CRAMER. That is what I mean, the department.

Mr. BENNETT. Yes, sir.

Mr. CRAMER. I did not mean the Bureau. I mean the department of public works.

Mr. BENNETT. Yes, sir.

Mr. CRAMER. Now, on this determination of this legal question, the finding of value or an agreement of value by settlement in the case was a judicial determination?

Now, the decision that was reached came about partially as a result of an opinion requested of the State? Was not the State consulted about it?

Mr. BENNETT. The State was consulted, and they submitted, under the signature of one of the attorneys general, that this was a judicial decision. That was submitted to Washington.

Mr. CRAMER. So, actually, the attorney general made that recommendation, did he not, that in his opinion under Massachusetts law it was—

Mr. BENNETT. It was a——

Mr. CRAMER (continuing). Even though it was by stipulation an agreement, a settled price pro forma, as you say, that this was a judicial determination, and the conclusion reached from that was that the Bureau of Public Roads then would have to pay the money. Right?

Mr. BENNETT. Yes, sir.

Mr. CRAMER. That is all.

Mr. BLATNIK. Thank you very much, Mr. Bennett.

There are no further witnesses this afternoon, and the subcommittee will resume its public hearings tomorrow morning at 10 o'clock, and the session for today is adjourned.

(Whereupon, at 4:50 p.m., the subcommittee was recessed, to reconvene at 10:10 a.m., Tuesday, February 20, 1962.)

RIGHT-OF-WAY ACQUISITION PRACTICES IN MASSACHUSETTS

TUESDAY, FEBRUARY 20, 1962

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS,
SPECIAL SUBCOMMITTEE ON THE
FEDERAL-AID HIGHWAY PROGRAM,
Washington, D.C.

The special subcommittee met, pursuant to adjournment, at 10:30 a.m., in room 1302, New House Office Building, the Honorable John A. Blatnik (chairman of the special subcommittee) presiding.

Present: Representatives Blatnik, Baldwin, Clark, Cramer, Fallon, Kluczynski, McVey, Scherer, Schwengel, and Wright.

Also present: Walter R. May, chief counsel; John P. Constandy, assistant chief counsel; James J. Fitzpatrick, associate counsel; George M. Kopecky, chief investigator; George H. Martin, administrative assistant; Robert E. Manuel, minority counsel; and Mrs. Kathryn M. Keeney, chief clerk.

Mr. BLATNIK. The special Subcommittee on the Federal-Aid Highway Program will please come to order.

We resume in a continuation of public hearings on right-of-way appraisal practices in the State of Massachusetts.

First of all, let me state there has been a 30-minute hold in the hearings for this morning. The reason for the hold was that another very important, thrilling, and dramatic operation was on and going A-OK. I think it is very proper that while we are engaged in earthly matters, that for these fleeting hours of this great historic event taking place this morning, that we should state our thoughts and heartfelt best wishes, and certainly our prayers go to a great American involved in it, and also to the tremendous team of civilians, both in Government and in industry and in educational institutions—both to the military and the civilians whose competence and creative ingenuity and technical skill through organization made this great feat possible.

The witnesses for this morning are as follows: We have two jointly, Mr. Carleton Hunneman and Alfred H. Dolben.

Mr. Hunneman and Mr. Dolben, will you please come forward to the witness chair? Will you please raise your right hands?

Do you solemnly swear that the testimony you will give before the subcommittee, will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUNNEMAN. I do.

Mr. DOLBEN. I do.

Mr. BLATNIK. Be seated.

For the record, will you identify yourself for the reporter and the committee, giving your full name and address?

TESTIMONY OF CARLETON HUNNEMAN, MILTON, MASS., PRESIDENT OF HUNNEMAN & CO., INC.; AND ALFRED H. DOLBEN, READING, MASS., MEMBER OF THE FIRM OF WILLIAM H. DOLBEN & SONS

Mr. HUNNEMAN. My name is Carleton Hunneman. My home address is 110 Churchill Lane, Milton, Mass.

Mr. BLATNIK. And you, sir?

Mr. DOLBEN. Alfred H. Dolben. My home is 17 Bond Street, Reading, Mass.

Mr. BLATNIK. Will you make yourselves comfortable and don't hesitate to move the microphones, if you wish.

Counsel, Mr. May.

Mr. MAY. Mr. Hunneman, you are president of Hunneman & Co., Inc.?

Mr. HUNNEMAN. I am.

Mr. MAY. Would you describe your firm, please, sir?

Mr. HUNNEMAN. Our firm is a general real estate business—carries on general real estate business. That includes selling and renting for others on commission; managing properties for others on a fee; it includes appraising; it includes a certain amount of what we call counseling advice for a fee. We have exclusive building employees, about 55 people in the organization. We have 2 offices in Boston, 6 outlying ones, and representatives in probably 15 other areas in Massachusetts.

Mr. MAY. Mr. Hunneman, how long have you yourself been in the real estate business?

Mr. HUNNEMAN. I started, I think it was in 1925, working for others, and established my own firm under the name of Carleton Hunneman, August 1, 1929.

Mr. MAY. And your appraisal experience would date back to what time?

Mr. HUNNEMAN. Before the war; 1935, probably.

Mr. MAY. Do you serve as the senior appraiser for your company?

Mr. HUNNEMAN. Yes.

Mr. MAY. Do you also serve as review appraiser for your company employees?

Mr. HUNNEMAN. Yes.

Mr. MAY. Are you an MAI?

Mr. HUNNEMAN. Yes.

Mr. MAY. What does MAI mean?

Mr. HUNNEMAN. It is a designation that those who are members of the American Institute of Real Estate Appraisers are entitled to use. That institute is a division of the National Association of Real Estate Boards.

Mr. MAY. MAI would actually mean a member of the American Institute of Real Estate Appraisers?

Mr. HUNNEMAN. That's right. Yes.

Mr. MAY. Mr. Dolben, would you tell the committee about your appraisal experience?

Mr. DOLBEN. My appraisal experience dates back to 1940. I, too, am a member of the American Institute of Real Estate Appraisers. I have had wide experience in appraising real estate, with particular emphasis on commercial and industrial.

Mr. MAY. What is the name of your firm at the present time?

Mr. DOLBEN. William H. Dolben & Sons. This was a business which was founded by my father and was carried on by the sons. We began business in 1904, and I have a son in there now. So three generations have been in the business.

Mr. MAY. Where is your firm located?

Mr. DOLBEN. 40 Court Street in Boston.

Mr. MAY. And it engages in what type of business?

Mr. DOLBEN. General real estate business. Management and sales, leasing, financing, and appraising.

Mr. MAY. Mr. Dolben, you yourself have made appraisals of large and complex properties?

Mr. DOLBEN. I have, sir.

Mr. MAY. Do I understand that several of those properties were valued in excess of \$10 million?

Mr. DOLBEN. You are correct, sir.

Mr. MAY. Mr. Hunneman, where is your firm located?

Mr. HUNNEMAN. Our main office was 19 Congress Street, Boston. That is our main office.

Mr. MAY. Mr. Dolben, you are past president of a number of organizations concerned with the real estate and appraising field?

Mr. DOLBEN. I am, sir.

Mr. MAY. Would you list a few for us?

Mr. DOLBEN. Well, there are not too many. The Massachusetts Real Estate Exchange, the Massachusetts Association of Real Estate Boards. A past president of the New England Chapter of the American Institute of Real Estate Appraisers. A former vice president of the former Boston Apartment Owners Association. Former trustee of the Massachusetts Board of Certified Appraisers—Real Estate Appraisers, I guess it is. I am also, and have been for 13 years, a president of a savings bank and a director of a commercial bank.

Mr. MAY. Mr. Hunneman, have you been associated with several of these organizations?

Mr. HUNNEMAN. Yes. I have occupied a good many positions in the Boston Real Estate Board and served two terms as president thereof. I am not only a member of the Appraisal Institute, but I am a member of the Society of Industrial Realtors and the American Society of Real Estate Counselors, National Association of Building Owners and Managers, the Property Management Institute, and perhaps a few more.

Mr. MAY. Mr. Hunneman, are you now a member of the Real Estate Review Board of Massachusetts?

Mr. HUNNEMAN. Yes.

Mr. MAY. Mr. Dolben, are you now a member of the real estate review board?

Mr. DOLBEN. I am, sir.

Mr. MAY. Mr. Hunneman, could you tell the committee how the real estate review board came into being?

Mr. HUNNEMAN. As I understand it, Mr. Callahan was commissioner—this was about 10 years ago.

Mr. MAY. That was William Callahan?

Mr. HUNNEMAN. William Callahan.

Mr. MAY. He was commissioner of the department of public works?

Mr. HUNNEMAN. Yes. About 10 years ago he thought it would be well to add what he believed would be some additional protection for the Commonwealth in the matter of land takings and damages paid for, and he asked Mr. Arthur Wilcox, who was then president of the Boston Real Estate Board, to select a group of a list of names of men who he thought would be qualified to look over the appraisal reports on properties taken and advise the department of a figure, which would be a maximum up to which such a review board, when established, would think it in the best interests of the Commonwealth, to make a settlement.

Mr. Wilcox came to me. That was the first I had heard of it, of course, when he came to me and said this was being done. It was not generally known at that time. And he asked me if I would serve on it.

Being—and I think this may be true of others on the board—being inexperienced in public service—the only job I had ever had was in service in the town of Brookline Planning Board, a State job. I hesitated some and then I said, “All right, I’ll do it.” Because as Mr. Wilcox put it up to me, you must not complain about what public authority does unless you are willing to do your share. So I said all right. And, of course, what I felt, and what we all felt at the beginning, was that sooner or later we would be approached by someone who would do us a favor in exchange for a favor, and so forth. And to the best of my knowledge no one has ever approached any member of the board to that end.

Mr. MAY. Didn’t you people, as a matter of fact, make an agreement among yourselves that if such an event happened you would resign in a body?

Mr. HUNNEMAN. Yes.

Mr. MAY. And each promised to report to the other one if such an approach had been made?

Mr. HUNNEMAN. That’s right.

Mr. MAY. And to your knowledge no approach has been made ever, through the years?

Mr. HUNNEMAN. That is correct.

Mr. MAY. Mr. Hunneman, who made up the original board?

Mr. HUNNEMAN. Mr. Dolben, I, Mr. Wilcox, Mr. H. Kingsley Durant, and Mr. Roy E. Connors.

Mr. MAY. Mr. Connors, Mr. Durant and Mr. Wilcox are also noted men in the real estate business?

Mr. HUNNEMAN. Well known and well reputed.

Mr. MAY. Could you give us just a brief description of each of those other members?

Mr. HUNNEMAN. Well, Arthur Wilcox is the son-in-law of Herbert Perry. I guess he is an older man now. He must be in his eighties. He succeeded his father, I suppose you would call it in a real estate business, which was mostly ownership investment of Boston property. Very large in retail, I think. As Mr. Perry has grown older, and it is an office widely known and respected, Mr. Wilcox has taken on more and more the responsibility for running his father-in-law’s business.

Mr. Connors is actually a member of the bar, although I don’t think he practiced much. He is a partner in the respected Boston real estate firm of Minor, Deploys & Madison, which came into being

perhaps 20 years ago, when two equally respected management firms, one of which was Minor, Burns & Banks, and the other was Deploys & Madison, merged. If you go back to the beginning of those you go back 100 years or more. They are probably Boston's oldest and best known.

Mr. Durant has been something of a specialist for a good many years. He was associated with a man named Francis Hastings, now quite elderly and an invalid for some time. He ran a unique business in Boston. It was the maintaining of a market for real estate securities, shares in these trusts, and bonds, and for many years that was really the sole market or medium through which you could buy or sell these securities. Mr. Durant worked on these securities of Mr. Hastings, and he also did some brokerage, real estate brokerage. He has had quite a little to do with the assembling of outlying areas for some of our larger shopping centers promoted by some of our larger Boston stores, and it is a highly specialized undertaking.

Mr. MAY. So actually all of the members of the board were prominent, reputable, experienced experts in the field?

Mr. HUNNEMAN. Yes.

Mr. MAY. Now, the original board which began to sit in 1951, all five members continued to sit up to the summer of 1961?

Mr. HUNNEMAN. Yes.

Mr. MAY. And in the summer of 1961, Mr. Wilcox retired and Mr. Durant retired?

Mr. HUNNEMAN. Yes.

Mr. MAY. And they were replaced by—

Mr. HUNNEMAN. Willard C. Bodge, and Earl Barnard.

Mr. MAY. Who is presently chairman of the Real Estate Review Board?

Mr. HUNNEMAN. Really, there is no chairman. The first one in in the morning when we are going to meet is termed chairman, but it is more said lightly. He issues no orders. There is no formality about it whatsoever. There is no real chairman.

Mr. MAY. Does the Board have any staff or employees?

Mr. HUNNEMAN. No, there is a girl who takes care of these records and who brings us material on which we work, but she isn't I wouldn't call her any staff of ours. She is the one that brings the stuff in to us.

Mr. MAY. Where does the board meet?

Mr. HUNNEMAN. It meets in a room on the fourth floor of the Department of Public Works Building, 100 Nashua Street, Boston. It has on the door "Board Room." That "Board Room" was on the door long before we came into being. I think it is just a—

Mr. MAY. This young lady you mentioned is an employee of the department of public works?

Mr. HUNNEMAN. Yes.

Mr. MAY. How often would the board normally sit?

Mr. HUNNEMAN. Well, up till perhaps 6 or 8 months ago we would usually sit a couple of mornings a week for 40 to 45 weeks a year. We would sit only on call, and sometimes there would be 2 or 3 weeks that would go by when they would not ask us to come down, and they would ask us to come down and we would run along perhaps 6 or 8 weeks sitting a couple of mornings a week.

Mr. MAY. If the board did sit for half a day in the morning, about how many separate properties would the board consider on an average day?

Mr. HUNNEMAN. On the average we would run through 8 or 10. Of course, we might have one we would be stuck on all morning. It would be complex.

Mr. MAY. I understand from your testimony that the board was initially established as a safeguard, concerned at that time with the takings which would be made for the central artery?

Mr. HUNNEMAN. That is correct.

Mr. MAY. In downtown Boston?

Mr. HUNNEMAN. Yes.

Mr. MAY. This was a State project and did not involve Federal funds. Later the board did what was considered a satisfactory job and it was decided to continue the board into the future.

Mr. HUNNEMAN. That is true. It was kept on.

Mr. MAY. The Acts and Resolves of 1952, chapter 556, section 6, second paragraph, reads as follows:

There is hereby created within the department of public works a real estate review board consisting of five members, to be appointed by the commission from members of the Boston Real Estate Board, from resident Massachusetts members of the American Institute of Real Estate Appraisers, or from members of the Massachusetts Real Estate Association. All vacancies in said board shall be filled by said commissioner from a list of five names submitted by the Boston Real Estate Board and five names submitted by the Massachusetts Real Estate Association. Said department shall fix the compensation of the members of the said real estate review board.

No payment in excess of \$2,500 by way of purchase of real estate or any interest therein shall be made and no settlement in excess of \$2,500 shall be made out of court for damages recoverable under chapter 79 of the general laws in excess of the amount recommended by said Real Estate Review Board.

No settlement in excess of \$2,500 and in excess of the recommendations of the real estate review board shall be made by agreement of the parties during or after trial except with the written approval of the court; provided, that settlements in excess of the recommendation of the board may be made without such approval if the settlement does not exceed the amount of any verdict or finding which may have been rendered, together with interest and costs.

The department is hereby ordered and directed to file reports of all payments in excess of \$2,500 for damages resulting from a taking or for purchase hereunder, with the clerk of the house of representatives and with the clerk of the senate not later than 90 days after payment. Such reports shall contain the amount of the payment, an affidavit that the amount was not in excess of the amount recommended by the board, if payment in excess of said amount is prohibited hereunder, by whom and in what manner settled, the name of the owner or owners of the land involved and a description of said land sufficient to identify it.

I also have here copies of all the contracts made through the years between the department and the real estate review board. I noticed that initially the fee for board members was \$125 per day. That was increased to \$150 per day on December 17, 1957, and it was increased to \$200 per day by contract on July 11, 1961.

I would like to read into the record pertinent portions of the first contract:

Said agreement made this third day of August in the year 1951, by and between the Commonwealth of Massachusetts acting by and through its department of public works, hereinafter referred to as the department, and William E. Connor, Alfred H. Dolben, H. Kingsley Durant, and Carleton Hunneman, individuals all having usual places of business in Boston, hereinafter referred to as the joint venturers.

And there is a caption, "Services to be rendered." I quote:

In consideration of the payments hereinafter to be made to said joint venturers by the Commonwealth of Massachusetts it is understood and agreed that the joint venturers shall examine and review any appraisals as assigned, heretofore made by the department or for the department, covering the land and buildings taken or injured in connection with the Boston central artery highway project in the city of Boston, and shall furnish to the department maximum value (with 5 copies) for each parcel entered or injured, this to be prepared by "any member of the group of joint venturers as it may determine, but each value shall be approved by said joint venturers unless anyone is disqualified because of some other interest in a particular parcel or for any other reason.

There is another caption, "Materials To Be Furnished by the Department." I quote:

The department shall furnish to the joint venturers prints of pertinent plans, photographs, and such data as has been gathered by the department, which will be of value in connection with this study, and also such engineering services as may be required. No member or employees of the department will be permitted to influence in any way the decision of the joint venturers on the amount of any value.

Another caption, "Basis of Payment." I quote:

The department agrees to pay and each joint venturer agrees to receive as full compensation for services rendered under this agreement to the satisfaction of the department a fee of \$125 per day, and hours as agreed upon, and for any portion of a day, when a full day is not worked, a proportionate part of this sum, payments to be made biweekly. Upon receipt of receipted bills the department shall reimburse said joint venturers for such clerical services as are furnished in connection with work done under this agreement. It is further provided that in case a petition is filed in Superior Court for the assessment of damages in connection with any parcels reviewed by the joint venturers, additional compensation at the rate of \$125 per day will be paid for court appearance for each joint venturer required to appear, and an additional fee of \$15 an hour for time spent in conference with the department in connection with the preparation of cases for court action.

One more paragraph that is pertinent entitled "Termination of Agreement."

It is further understood and agreed that this agreement shall be subject to cancellation upon 10 days' written notice of the department of public works to said joint venturers.

In reviewing the contracts I note that that 10-day written notice was changed to 30 days' written notice as of January 2, 1957. The contracts through the years, Mr. Hunneman, have not changed greatly as far as the services to be rendered are concerned. Is that true?

MR. HUNNEMAN. No, they have not.

MR. SCHWENGEL. I would like to ask the counsel a question, Mr. Chairman.

MR. BLATNIK. Mr. Schwengel.

MR. SCHWENGEL. Does this board have legal status by an act of the legislature or by an act of the commission?

MR. MAY. Mr. Hunneman.

MR. HUNNEMAN. I do not have a legal background, but I understand that it is on the books of the Commonwealth as a law.

MR. MAY. Has there been any significant change in the services to be rendered through the years, Mr. Hunneman?

MR. HUNNEMAN. There has been no change. There was one exception.

MR. MAY. The most recent contract in 1962—was that the sum change in requirements?

MR. HUNNEMAN. That spelled out—and I think they added a line to it—which stated we should give reasons. And we now use a certificate giving the basis for our opinion.

MR. MAY. Yes. I think the line you referred to is—I quote:

The board shall comply with the provisions of chapter 385 of the act of 1961.

MR. HUNNEMAN. I think that is it. Yes, that is it.

MR. MAY. That necessitated your setting forth in writing the reason behind the figures established by the board?

MR. HUNNEMAN. Yes. What we have is the copy of our certificate now, since that went into effect, carries the basis for our reasoning as to the figure.

MR. MAY. Mr. Hunneman, what type of information or data would be submitted to the review board on a given piece of property?

MR. HUNNEMAN. We would receive in most instances a brown envelope containing—from the department of public works—containing their report, maps, pictures on the property. We would then have also usually two reports from independent outside appraisers. Once in a while there would be only one, and sometimes there were three. We would usually receive two copies of each—an original and a copy. Did you want me to go on and tell what I did?

MR. MAY. No. I was going to ask, did the board members as a practice go out and view the property to be taken?

MR. HUNNEMAN. No.

MR. MAY. So the board worked with the information submitted to it by the department?

MR. HUNNEMAN. Yes.

MR. MAY. Mr. Hunneman, what would you say the purpose of the review board was?

MR. HUNNEMAN. It seems to me that the purpose of the review board can best be defined as the providing of a vehicle, or means by which the department of public works could give a reasonable upper limit figure within which to settle cases. And, of course, if they could settle the majority of their cases it was better for the Commonwealth than having to go to court, and better for the property owners. But that upper limit could not be exceeded by the department of public works. If the owner would not settle within that limit, then they had to go to court. But it did provide, and I think perhaps it reduced a lot of the effort and time in negotiating with owners by the department of public works. It gave them a definite thing. They could trade up to that and do the best they could, but they couldn't go beyond it.

MR. MAY. The problem was to take the appraisal report submitted, plus other information submitted, and to reconcile the figures, and to come out with a maximum figure?

MR. HUNNEMAN. Yes, that is correct.

MR. MAY. And when we discussed it with you previously you said:

The purpose of the board was to examine material submitted on each property and consider the problem in the light of the information furnished, and, drawing heavily on our experience, to arrive at a maximum figure.

Is that good enough?

MR. HUNNEMAN. That is correct.

MR. MAY. Mr. Dolben, what would you say the job of the board was?

Mr. DOLBEN. Identical.

Mr. MAY. You said "The job of the board was to look over the evidence and come up with a maximum figure." Is that it?

Mr. DOLBEN. That's right.

Mr. MAY. Mr. Chairman, we had testimony earlier in the hearings from Mr. Stevenson, the regional engineer of the Bureau of Public Roads in Albany, who had under his jurisdiction the State of Massachusetts. We talked to Mr. Stevenson about the review appraiser function and Mr. Stevenson said:

It has always been a requirement of the Bureau of Public Roads that the State will have in some way the review appraiser function performed.

Mr. Stevenson described the review appraiser function thusly. He said:

The review appraiser should review the report itself. It should be read and analyzed and checked for completeness of data, and for errors and omissions, basic assumptions, authenticity of data, application of appraisal techniques, correlation, and reasonableness of final conclusion, and for noncompensable items.

Mr. Hunneman, did the real estate review board perform that function?

Mr. HUNNEMAN. No, it did not.

Mr. MAY. Mr. Dolben?

Mr. DOLBEN. It did not, sir.

Mr. CRAMER. May I ask a question there?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Who did you understand was otherwise performing that function?

Mr. HUNNEMAN. I didn't know that—I didn't even know the function existed, sir.

Mr. CRAMER. Well, it is logical, is it not, that someone should have the duty of reviewing the appraisers' appraisals to decide what the State's position should be, and whether the appraisals are correct, would it not? Somebody along the line should take a look at what information is available and decide what the States should do, shouldn't they? To do this function he is talking about right here?

Mr. HUNNEMAN. That function—I didn't know a provision was even made for that function.

Mr. CRAMER. You mean so far as your duties are concerned?

Mr. HUNNEMAN. Yes. And insofar as my knowledge was concerned. The appraisal reports came to us from the independent appraisers. We received the department of public works report and it was on that we worked. I was not under the impression that the appraisal reports of independent appraisers were being supervised before they came to us, or examined, or reviewed.

Mr. CRAMER. You were not aware of the fact that in some instances appraisals came in that were unacceptable and they had to go back and make new appraisals within the department?

Mr. HUNNEMAN. There may have been over the years a few where we said, "We have got to have more on this," and they went back with the appraisal. By I don't know of any—

Mr. DOLBEN. May I comment on that, sir? My impression is—and we had nothing to do with the administration of it—

Mr. CRAMER. I understand that.

Mr. DOLBEN. But my impression is—and you correct me if I am wrong—is that for a long time after we began serving—and when this changed I don't know to this day—that we were the only ones who had access to the fee-appraisal reports. In other words, they were not available to anyone in the department. That is my impression.

Mr. CRAMER. You were under the impression then that no one, prior to the time that the appraisals came to you, had an opportunity to look at them, or to evaluate them, or to perform this function that I just described?

Mr. DOLBEN. The fee appraisals. That is my impression, for a long time after this.

Mr. CRAMER. Before you were appointed were you given an opportunity to become fully acquainted with all of the steps leading up to your receiving the appraisals with regard to what the State function was? How these appraisals were acquired, and who had the appointing authority, and so forth?

Mr. DOLBEN. No, sir.

Mr. CRAMER. You were not indoctrinated as to what the State's responsibility through the department of public works was?

Mr. DOLBEN. At no time; but bear in mind that we were appointed before this public works came into the picture.

Mr. CRAMER. Yes.

Mr. DOLBEN. And just kept on.

Mr. CRAMER. As of the time it came into the picture then you were not informed?

Mr. DOLBEN. There was no change.

Mr. CRAMER. As to what changes in procedure might result and, therefore, how the finished product you got in your hands came about?

Mr. DOLBEN. We had no such knowledge.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. BALDWIN. When you say it was your understanding, Mr. Dolben, that no one had access to the fee-appraisal report except your board—

Mr. DOLBEN. That's right.

Mr. BALDWIN. These reports mechanically had to get to your board, and somebody had to assemble them, so if you were reviewing a certain set of cases you could take the fee-appraisal reports for those cases compared to somebody else. So didn't somebody actually determine and take the proper fee-appraisal reports and determine which properties they applied to and assemble them into a docket of the case?

Mr. DOLBEN. Of course, they came to us through this channel that has already been described, but my point is it was my impression that those were not available to the department as such, that is, the right-of-way department.

Mr. BALDWIN. You mean, available to the members of the board generally?

Mr. DOLBEN. That's right.

Mr. BALDWIN. But they certainly must have been available to certain specific members of the department?

Mr. DOLBEN. Well, I don't know.

Mr. BALDWIN. They were assembled in a case docket when they came to you, were they not? All of the fee-appraisal reports that

applied to one piece of property were assembled when they came to you?

Mr. DOLBEN. That is correct.

Mr. BALDWIN. There was evidently somebody in the department who did that.

Mr. DOLBEN. They came to us through this young lady over the years. Where it went before that we never had any knowledge.

Mr. WRIGHT. Will the gentleman yield?

Mr. CRAMER. I have just one more question and then I will yield.

The contract you are performing under, or under which you are performing services, states—

shall make recommendations as to payments, or settlements for damages recoverable under the general law, and shall furnish the department a maximum value.

As I understand your testimony, you thought your function was to furnish a maximum value. But what about the recommendations as to payments or settlements for damages? This is part of your contract? What did you understand your function was?

Mr. DOLBEN. Do you want to answer that?

Mr. HUNNEMAN. Is that addressed to me, sir?

Mr. CRAMER. Mr. Hunneman first.

Mr. HUNNEMAN. I think that was accomplished when we gave them the upper limits, sir.

Mr. CRAMER. You are aware, are you not, that at least during the period of time, as I recall the testimony, that settlements were permitted and were negotiated below the maximum figure?

Mr. HUNNEMAN. Yes.

Mr. CRAMER. What did you do in making recommendations as to payment, or settlement for damages?

Mr. HUNNEMAN. We did nothing beyond giving the upper limit.

Mr. CRAMER. And in your opinion fixing the upper limit then was full compliance with this contract, which also provides for recommendations as to payment or settlement for damages?

Mr. HUNNEMAN. I believe it was full compliance.

Mr. CRAMER. Are you aware of the practice, as I understand it, that later developed, where the State in sending out its negotiators advised the property owners of the maximum value, and invariably settled for the maximum value? Do you think that is a good practice?

Mr. HUNNEMAN. It is an outrageous practice.

Mr. CRAMER. Then if that is an outrageous practice, isn't it equally outrageous for you to set a maximum value and not to make recommendations outside of that under this contract, as a guide to the State, as to what you think a fair settlement is as compared to the maximum value?

Mr. HUNNEMAN. I don't think so. The difference might be so fine there that it would be impossible to evaluate.

Mr. CRAMER. It could amount to a lot of money. It may be fine, but it could amount to a lot of money, couldn't it?

Mr. HUNNEMAN. But we were not negotiators.

Mr. CRAMER. I understand that.

Mr. HUNNEMAN. At no time, and I don't see how we could have done more than we did unless we had been employed to negotiate.

Mr. CRAMER. But you do think, to get your expression, if you were negotiating on a maximum value basis, it is outrageous?

Mr. HUNNEMAN. No, I didn't mean that. What I meant was that it was outrageous for somebody employed by the department of public works to go out and negotiate in the best interests—

Mr. CRAMER. I agree with that wholeheartedly. The question now is how can you overcome it when your only function is to set the maximum value? Somebody along the line apparently misunderstood what your function was, because apparently the State took the position, the department of public works, the negotiators, "Well, these people have set this up. This is the value we have to negotiate on." Did you ever intend your maximum value to have that implication?

Mr. HUNNEMAN. No.

Mr. CRAMER. And you say it is outrageous if it did? If they used it that way?

Mr. HUNNEMAN. Well, as I understood your question to me, did I know that these negotiators in approaching a property owner took a maximum value and used that right off—

Mr. CRAMER. They even made it known to the property owner.

Mr. HUNNEMAN. Yes. I don't think they should have disclosed it.

Mr. CRAMER. Why, of course not. What do you think, Mr. Dolben?

Mr. DOLBEN. I agree with that, but I do want to make one thing clear here: That once this figure went beyond us, unless we happened to agree to a settlement for a large payment, at no time did we have any knowledge of what went on before or after that.

Mr. CRAMER. I am not intending to imply you did.

Mr. DOLBEN. Yes.

Mr. CRAMER. In the experience you had, the accumulated experience—and I respect that, your having been appointed to this board on the basis of your experience—I think your opinion is valuable to this committee with regard to what you think of this practice of taking the maximum value you have fixed, and advising the owner of it and settling on that basis. That was never your intention?

Mr. DOLBEN. No, sir.

Mr. CRAMER. To fix the maximum value. Was it?

Mr. DOLBEN. No, sir. It was not.

Mr. CRAMER. I yield to the gentleman from Iowa.

Mr. SCHWENGEL. How much did you say you got paid by the State for this service?

Mr. HUNNEMAN. We are paid on a per diem basis for the time we sit. We are paid currently at the rate of \$200 a day. If we sit a half a day we are paid \$100. We don't all of us sit at every opportunity because—

Mr. SCHWENGEL. Is this comparable to the pay you would get if you were doing private appraisals?

Mr. DOLBEN. It is, sir.

Mr. HUNNEMAN. Yes.

Mr. SCHWENGEL. Let me ask you this: If you are doing private appraisals, or when you do private appraisals—and I ask this of both of you—do you make personal inspections?

Mr. DOLBEN. Absolutely.

Mr. HUNNEMAN. Oh, yes. Very careful.

Mr. SCHWENGEL. And you would have valued the job you are doing here for the State as important as the job you were doing for private individuals, would you not?

Mr. HUNNEMAN. As important?

Mr. SCHWENGEL. Yes.

Mr. HUNNEMAN. Yes, but it is different. It is not the same thing.

Mr. SCHWENGEL. What is that?

Mr. HUNNEMAN. It is a different job, but it is just as important.

Mr. SCHWENGEL. But it is a job that had to be done?

Mr. HUNNEMAN. Yes.

Mr. SCHWENGEL. And the State could not deal adequately and fairly and serve the public interest——

Mr. HUNNEMAN. That's right.

Mr. SCHWENGEL. If it did not have all of the facts and have somebody it could rely on.

Mr. HUNNEMAN. That's right.

Mr. SCHWENGEL. You, as citizens of your State, and certainly as leaders—and you are leaders, and from the testimony it is evident you are leaders and outstanding people in this field—must have known that what you are doing was completely inadequate——

Mr. HUNNEMAN. No.

Mr. SCHWENGEL. To the State, because they could not, if they had to rely on you. You made no personal inspection, as I understand it, for the State, but just met and reviewed the figures handed to you?

Mr. HUNNEMAN. That's right.

Mr. SCHWENGEL. So you didn't have as much knowledge in hand on which to pass judgment as you would have had if you were dealing with private interests?

Mr. DOLBEN. The two are so different.

Mr. HUNNEMAN. They are so different. We are working—our work on the review board was not appraising property as in real estate parlance we term appraising. It was not appraising.

Mr. SCHWENGEL. How could you? If you did not make personal inspections and there is nothing in the law that would have kept you from doing so. Is that right?

Mr. HUNNEMAN. There is nothing in the law.

Mr. SCHWENGEL. That would have kept you from making personal inspections. Then how could you make honest appraisals then and set the upper limit under which it could be settled, and serve the public interest?

Mr. DOLBEN. May I answer that question this way, sir: I think that you are confusing the terminology of making appraisals with reviewing appraisals. You say how could we make an honest determination. Let me say to you, sir, that our office has represented one of the largest insurance companies in the country for many, many years. They have asked us to do appraisals for them. Our appraisals go down to the home office and they are reviewed in much the same manner that we are reviewing the appraisals which come in to us for the State; and on the basis of our background and experience they are either accepted or not. A loan is made or it is not made. But the home office does not come up and make another inspection. Don't you see the difference?

Mr. SCHWENGEL. If you were designated then the State had in mind you would perform a public service that would save the taxpayers some money.

Mr. DOLBEN. We think we have.

Mr. SCHWENGEL. And the testimony we have so far does not indicate that your review board has been very effective.

Mr. DOLBEN. Well, I disagree with that statement, sir.

Mr. SCHWENGEL. Up to now we have discovered a lot of money that has been wasted and some very bad practices that have been revealed here, and they have not served the public interest. I press you on this point because you are outstanding in your field and because you are citizens of a great Commonwealth and a great State.

It seems to me as public servants you could have gone the extra mile and gotten some of this information, and we would not have had this problem we are forced to investigate in Massachusetts at this time.

Mr. DOLBEN. May I make a comment on that, sir? If in our original contract on the Grand Central Artery, if we had been requested to make an inspection, not one of us would have served, because there just isn't time enough to do it. There just isn't time enough. I don't know how many cases came before us over the 10 years we have sat, and going on 11 years now, but I will say it must be in the vicinity of 1,000 or 1,500 a year, and we couldn't do it, and no one else could have done it.

Mr. SCHWENGEL. Let me ask this: Under the law could you have employed people to do some of this detail work for you?

Mr. DOLBEN. I don't know. I don't know.

Mr. SCHWENGEL. Did it ever occur to you that you should make this kind of investigation to find out or did it occur to you that this law may not be adequate and, therefore, maybe there should be an amendment to the law?

Have you ever talked to anybody about this, if you did not have the——

Mr. DOLBEN. No, I don't think we did—did we?

Mr. HUNNEMAN. No. If we hired somebody to go out and make an appraisal it would be simply an additional independent fee appraisal. We would give——

Mr. SCHWENGEL. Could you not have made a more honest and thorough statement, and had the grounds on which to rest your case for setting this amount, this ceiling?

Mr. HUNNEMAN. We were given, in most cases, two appraisal reports plus the department report, too.

Now, had we employed an additional appraiser to go out and make an appraisal in just the same scope and thoroughness as the others, it would simply be an additional one.

Mr. SCHWENGEL. You had no one to send out, to do some spot checking, to find out if what you were doing was actually correct?

Mr. HUNNEMAN. Would you repeat that, please?

Mr. SCHWENGEL. You had no one to represent you to go out and do even spot checking? You said you did not go out and inspect any one of these properties.

Mr. HUNNEMAN. No. There were three, I think, in 10 years, because of the peculiar characteristics of the property involved.

One was a lot of property up in the city of Worcester that was owned by the city of Worcester, which was taken, and the job up there was so enormous that just understanding it, to have some conception of it, aside from the plans and the photographs we had, we had to go take a look at it. We took a look at a couple of other complex ones.

Mr. DOLBEN. Well, I think, if I may add to that statement, one reason we went to Worcester was that under the Massachusetts law there was no court of appeal beyond us, so that if we were going to act for both sides in that case we noted we should go; where there was a difference of opinion, too.

Mr. WRIGHT. Mr. Chairman?

Mr. BLATNIK. Mr. Wright.

Mr. SCHWENGEL. I will yield to the gentleman.

Mr. WRIGHT. I think there may be some confusion as to the exact function of your real estate review board.

As you clearly understood your function and your obligation and responsibility, it was not to serve as appraisers nor to serve as negotiators but, rather, to serve as reviewers of the appraisals that came to you and, in reviewing those appraisals, to set a maximum figure beyond which you would recommend against the State's going?

Mr. DOLBEN. That's exactly correct.

Mr. WRIGHT. Does this constitute the sole total function——

Mr. HUNNEMAN. Yes.

Mr. DOLBEN. Yes.

Mr. HUNNEMAN. And that is a very concise and accurate statement, sir.

Mr. MAY. Pardon me. Is it, really, Mr. Hunneman, and Mr. Dolben? It was not your function to do those things that we have just said Mr. Stevenson has insisted upon. We have got to understand clearly right now that the board has not functioned, through the years, as review appraisers——

Mr. CRAMER. And neither has anybody else.

Mr. WRIGHT. That is the point.

Mr. CRAMER. And neither has anybody else. That is the problem.

Mr. MAY. The function of the board was to sit there, consider all the information available, reconcile the figures, and establish a maximum value on the property.

This is most important to the hearing that we all understand exactly what the review board did.

Let's go along, Mr. Chairman, and a little bit further——

Mr. CRAMER. Will counsel yield?

Mr. MAY. It will——

Mr. CRAMER. Is it your position that, after your research, the name "review board" is probably a misnomer? It is not actually "review." They do not review the appraisals consistent with this, nor have they done it in the past.

Mr. MAY. Exactly.

Mr. CRAMER. That is the problem. Nobody else does it either.

Mr. MAY. Exactly, Mr. Congressman. Perhaps a better name for the review board would have been something like "evaluation board." Is that right, Mr. Hunneman?

Mr. HUNNEMAN. I think it might well have been.

Mr. MAY. May I go along just a little bit further, Mr. Chairman. We understand from both of you, gentlemen, you did not serve as a review appraiser. Is that right, Mr. Hunneman?

Mr. HUNNEMAN. That's right.

Mr. MAY. Is that right, Mr. Dolben?

Mr. DOLBEN. Well, you are getting into——

Mr. MAY. When I say "review appraiser" I am going back to the bureau of public roads' concept of what the functions of a review appraiser would be.

Mr. DOLBEN. That's right, sir.

Mr. CRAMER. Mr. Chairman, may I ask counsel a question right there?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. I understand that under paragraph 4-A-15, under the PPM 21-4.1, known as the right-of-way procedures, that it requires the State highway department to file a statement signed by its chief officer as follows:

Our reviewing appraisers are selected by their qualifications required therefor and the procedures followed in reviewing the appraisals.

Now, have you information from Massachusetts as to what was filed pursuant to that, and if you do not have, should we not get it?

Mr. MAY. We have already heard from Mr. Stevenson, the first day of the hearing, exactly what Massachusetts had to say with respect to these functions.

Mr. CRAMER. Who was the reviewing appraiser? I do not remember anyone designated as the review appraiser except the review board.

Mr. MAY. Mr. Stevenson testified that it was his impression through the years, and Mr. Bennett testified that it was his impression through the years, that the review board performed the reviewing functions.

Mr. CRAMER. Precisely.

Mr. MAY. We are hearing today that they did not.

Mr. CRAMER. So there is a void, a complete void, in reviewing appraisers, and that is what you are trying to demonstrate in this testimony. Right?

Mr. MAY. Yes, sir.

Mr. CRAMER. In other words, the State of Massachusetts did not conform to this requirement from an operational standpoint. Technically, so far as the Bureau is concerned, they had the agency by name to do it, the "review board," but they had no one designated to carry out the actual function of review appraiser. Right.

Mr. MAY. Without a doubt.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Dolben, when we spoke to you I asked you what your concept was. You said that, and I quote you—

It was not our function to serve as review appraisers. Our function was to safeguard within limits.

My concept was that we have got to deal with the data submitted to us if we can, not to be critical of the report.

Is that right, Mr. Dolben?

Mr. DOLBEN. That is right.

Mr. MAY. You said—

If a particular report was incomplete, if it was not fully documented, it was not the board's function to call it to Mr. Dole's attention.

We wouldn't complain to Dole that an appraiser was incompetent.

Is that right, Mr. Dolben?

Mr. DOLBEN. That is correct, sir.

Mr. MAY. You said it was not the function of the board to administer the program; the board was not in the business of hiring fee appraisers or passing on their qualifications. That it was Commissioner Dole's

function to assign fee appraisers, and it was up to him to see that they got qualified people. Is that right, Mr. Dolben?

Mr. DOLBEN. That is right.

Mr. MAY. You said in the operation of the board the members had to assume that the appraisers were honest and competent. Is that correct?

Mr. DOLBEN. That is correct.

Mr. MAY. Now, Mr. Hunneman, we asked you the same questions at a different time and separately from Mr. Dolben and you said—

We did not do a review appraisal on each appraisal report. Our objective was to establish a figure.

If a report was inadequate it still might include some data to help our thinking.

Is that right?

Mr. HUNNEMAN. That's right.

Mr. MAY. You said it was not the board's function to pass on the qualifications of the appraisers, either fee or departmental, or the adequacy of their reports?

Mr. HUNNEMAN. That's correct.

Mr. MAY. You said, Mr. Hunneman, and I quote, "We can be fooled by false information?"

Mr. HUNNEMAN. True.

Mr. MAY. True?

Mr. HUNNEMAN. True.

Mr. BALDWIN. Mr. Chairman, I would like to ask a question on this point.

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. Mr. Hunneman, do I understand then that at no time, throughout the entire period that you and Mr. Dolben have served on this board, at no time you have ever recommended to the department of public works that any fee appraiser ever not be given additional work? Is that correct.

Mr. HUNNEMAN. I think that we have on a few occasions. It seems to me—you correct me if you think I am mistaken in this—I think there have been three or four over the years. They have gone back quite a long time. We said we really didn't think they were worth continuing.

Mr. BALDWIN. And what happened when you made that statement?

Mr. HUNNEMAN. I imagine they were dropped. I don't recall. I think they must have been.

Mr. BALDWIN. Well now, you testified earlier that on some cases you did return a set of appraisals to the department of public works and say that you needed some additional evidence or facts. You mentioned this a little earlier, that occasionally this kind of situation occurred where, apparently, you needed an additional appraisal, but you did not point out that the actual work of some existing fee appraiser, on that case, was inadequate and should not be continued?

Mr. HUNNEMAN. Well, maybe we are talking about two different things. We occasionally would have a case where it might be a large case, it might be a complicated one, or it might be that it seemed to us the appraiser's valuations weren't completely reasonable, as we saw it. We would, in such a case or in either one of those cases, ask for an additional appraisal to see what a third appraiser would say about it.

That usually did the trick for us and field—either confirmed what we had or if it was markedly different from the other two, I think there may have been some cases where we got a fourth one. We may have gotten a fourth.

Now, that is where we—those cases are the cases where the data we had before us did not guide us sufficiently to provide what we thought was a reasonable estimate of a value of—of a top value.

The additional appraisal might have served to do that or, as I say, we might have gotten another. The other—there probably were a few—there were, I think—a few appraisers that didn't—that weren't providing us with anything useful. I think Mr. Dole dropped those.

Mr. BALDWIN. Thank you.

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Chairman, in my judgment, we have reached the most important point in the entire hearing. Let me sum up the testimony that we have heard thus far through the hearings.

We have heard that it was Commissioner Dole's function to assign fee appraisers. We have heard that, due to pressure, or for other reasons, he and other persons assigned fee appraisal work to individuals whose qualifications were unknown to Mr. Dole.

We have heard that Mr. Dole accepted the statements of the fee appraisers as to their qualifications. We have heard that Mr. Dole was not competent to do so and, in fact, did not review the fee appraisal reports. We have heard that Mr. Tom Bennett, of the bureau of public roads, looked at an infinitesimal number of fee appraisals and, half of them, after submission to the review board.

We hear now that the review board did not review the fee appraisals. Consequently, there was being conducted no review of fee appraisal reports to determine their adequacy or to judge the competency of the individuals making appraisals. It should be apparent where there is no review, there is no control.

Mr. CRAMER. Will counsel yield?

Mr. MAY. The seriousness of this situation becomes even more striking when we realize from July 1, 1956, through 1961, that costs for right-of-way for Federal aid highways in the State of Massachusetts, was an estimated \$84 million. And the Federal participation in this total would approximate \$63 million, all with no review of any of the fee appraisals.

Now, Mr. Hunneman, when it came to establishing a figure by the review board—

Mr. CRAMER. Before you go into that: And this established, obviously, a gaping loophole in the fixing of values, which opened the door to people who were aware of it, and they seemed to be the ones who were operating here in these cases of fraud, to bilk the public, and it gave the crooks and grafters a gaping loophole to use, did it not?

Mr. MAY. Exactly.

Mr. CRAMER. That is one of the reasons why we have the problem, is it not?

Mr. MAY. Yes, sir. This is the reason why you have the problem. Mr. Hunneman, when it came to establishing a maximum value figure for a given piece of property the review board would place more emphasis on fee appraisal reports, would it not?

Mr. HUNNEMAN. I think it would; one reason being that over the years the department reports were very useful to us, but they didn't have a good deal of comparable data. They weren't what we call a demonstration appraisal. And I don't think they were expected to be.

Mr. SCHWENGEL. Mr. Chairman, I would like to ask counsel if, in his opinion, under the law of the State of Massachusetts these men could have fulfilled the functions set up by the bureau of public roads for the review board?

Mr. MAY. Yes, I would say that if the board had been charged with that responsibility of conducting what the bureau of public roads considers the review appraisal function, that the board could have done so.

Mr. CRAMER. If the board knew that was its function.

Mr. MAY. That is right. If it was charged with that responsibility it could have done so.

Mr. SCHWENGEL. Could it not have done so under the agreements that were signed? As I understood those contracts, they were rather broad, and I think that they could have fulfilled the requirements of the law and regulations set up by the bureau of roads.

Mr. MAY. The law, as it is written, and the contracts signed with the review board did not charge the review board with performing what we have called the review appraisal function.

It does mention the word "review" but Mr. Hunneman——

Mr. SCHWENGEL. That is the thing I noticed.

Mr. MAY. But, Mr. Hunneman, you will correct me if I am wrong, but this use of the word "review" in the contract means to you and the other board members that you will review, meaning look at the information supplied to you, consider the information supplied to you——

Mr. SCHWENGEL. Or——

Mr. MAY (continuing). With your purpose being to establish that maximum——

Mr. HUNNEMAN. That is it.

Mr. SCHWENGEL. Or available to them, is certainly implied there.

Mr. MAY. Yes, and, well, to consider what is available to them.

Mr. SCHWENGEL. Yes. Now, we have heard the testimony of your qualifications you are successful businessmen.

You deal with huge projects in private industry, and I now recognize your name, sir, because I am in the insurance business in private life, and you have a fine reputation.

I am surprised, sir, though, that with what you know about this field and with the ability that you have that your talents have not been applied in the public interest in this instance, speaking of the welfare of the Commonwealth of Massachusetts.

And I am surprised to hear, if you testified to this, that you did not know about the bureau's requirements here.

Mr. DOLBEN. That is correct.

Mr. SCHWENGEL. Because you are men of stature, I think, and I am very surprised that knowing, as you must have known, the great responsibility that rested on your shoulders that you did not make it your business to know about these things.

The papers of your State were full of scandals in the road system in your State. And they are a disgrace to America and most certainly a disgrace to the community——

Mr. BLATNIK. The Chair——

Mr. SCHWENGEL (continuing). That serves as the birthplace, in a sense, of this great country of ours.

Mr. BLATNIK. If we may be permitted to continue, we will. Each member has a right to his own opinion at this point and the chairman has his opinions, too, but——

Mr. SCHERER. Mr. Chairman——

Mr. BLATNIK (continuing). Our main responsibility now is to complete in every detail possible, with as logical testimony and data as we can, to give us a complete picture of what happened and, obviously, we have individual opinions but the committee itself will come up with a full summary of what the findings disclose and then with our own conclusions and recommendations.

Mr. SCHERER. I have just this, Mr. Chairman.

Mr. BLATNIK. Mr. Scherer.

Mr. SCHERER. I think Mr. Schwengel made some charges and the witnesses have indicated that they wanted to defend themselves and answer. I think they should be given that opportunity.

Mr. WRIGHT. Mr. Chairman?

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. In that connection, I do not want to labor the point, but I would like to make the observation that I share Mr. Schwengel's very deep and, obviously, sincere concern that this necessary function went unperformed.

Yet, I think probably the gentleman who comprised this review board performed the function which they conceived to have been assigned to them in a reputable and creditable fashion.

Whereas, the testimony has shown certain instances where gross wrongdoing went undiscovered, I rather expect that the members of the review board, reputable, responsible citizens that they are, were just as shocked and surprised and as deeply dismayed to discover that this had occurred as anyone could conceivably be. If wrong there was, in the creation of the review board, it seems to me likely that the wrong existed in the public misconception of the function being performed by the board, and the false sense of security which the public and, perhaps, the State, and quite likely the bureau of public roads, was lulled into is a result of their confidence in the reputability and the integrity of the review board itself.

And I think this is probably what we are still trying to say. There was a loophole, a function that nobody performed. Everyone somehow assumed that the review board was performing this function, but in fact nobody was.

Mr. CRAMER. Would the gentleman yield?

Mr. WRIGHT. Yes.

Mr. CRAMER. I agree with the gentleman's statement with one exception, and that is that the responsibility of setting this machinery in motion to do the job, one phase of which was to review appraisals as specifically set out by the Bureau of Public Roads memorandum, was not being done, and that is the direct and the sole responsibility of the State of Massachusetts to do it.

Now, admittedly, the Bureau has a duty to see that you oversee it as well and make sure that it is done. But the State, represented through the review board, that it was being done. In fact, it was not being done.

That is the responsibility of the State. And there were a lot of grafters and crooks who knew it was not being done, knew that this was the loophole, and that is how they used it.

Mr. WRIGHT. I quite agree with the gentleman from Florida and with Mr. Schwengel, too.

Mr. BLATNIK. Do the gentlemen wish to respond to any comment, and particularly to the—

Mr. DOLBEN. Well, I still think that, in spite of the gentleman's statement, as I understood it, that we were derelict in our duty, that we were not, sir, as we understood it. I wanted to get that on the record.

Mr. MAY. As we go along, Mr. Chairman, we will talk in detail of what the day-to-day operation was and the picture may become even more clear. Mr. Hunneman, let's take a typical day when the review board sat to consider, say 8 or 10 properties. Would you consider one property at a time? What mechanical process would you take?

Mr. HUNNEMAN. What would happen is we would be given a tissue where, on the left hand column, were the parcel numbers.

That's the way they were identified by the department of public works. Next would be the name of the owner, and the names meant nothing to us unless we spotted one where we had done business with them, like some big company, and we wanted to disqualify ourselves.

The next column would have the figures with the department appraisers, and you would have then one, two or three columns with the names of outside fee appraisers at the top, and the figures of their appraisals down through there. And a space for the review board to put a figure.

These sheets were typed up by this very competent young woman, for whom I have the greatest respect, and I think she ran it well. She would give us one of those sheets in the morning.

She would also give us a sample—a department envelope with the properties and the independent fee appraisers' reports. Those, most cases, were in duplicate.

We would have them on the table there, and I don't know that any two of us worked exactly the same way.

I found it helpful to take the department's appraisal first, even though it might be extremely simple and not anywhere near what we call a demonstration appraisal. But it is a good thing because from the front of it I could get a quick summary of the property as a whole, the piece that was being taken, and there was a place where the revenue stamps were indicated.

That would give me a quick figure of what, perhaps, the fellow paid for it. I turned it over on the back side and there would be other comments, when he bought it, another figure of what he paid for it, and there would be some comments of what he had done to it. Maybe he built a well or something else.

Then inside here there would be the department's own calculation, which up to 6 or 8 months ago—they are doing a much fuller job now—might be just on the cost approach, as we say, an estimate of the land value, the building, if there was one there, figured replacement cost less depreciation and—

Mr. MAY. Actually, it would not amount to a fully, complete, fully documented appraisal report, but it would contain some information to help you in your thinking?

Mr. HUNNEMAN. Yes, that was it. And it was very helpful in my case. I picked that first. I got a quick picture of the thing in my mind. Then I would go on to the reports, the regular reports, from the appraisers and I would read them over.

I might refer to the department's again. All of us would be doing this around the table, and then when I—having considered the material before me, thought about it a bit, my practice was to take a pencil or a pen, or whatever I happened to have, and put my figure out in the right hand column on this tissue paper sheet. Mr. Dolben kept a lot more. He is a neater and better bookkeeper than I am. But mine served.

Well, we did that until about the last 15 minutes of a sitting. Then we would stop, and we would confer and discuss these, beginning at the top of the sheet, and going right down the line, and we would agree property by property on a figure which was a composite, you might say. And not necessarily—we didn't average these things.

Some may have ended up as an average, but we—very often somebody would have spotted something that the other fellows missed about a property and maybe we would have a sharp argument for a while, but, after all, no one was willing eventually—

Mr. MAY. Now, in this process you got some benefit from the departmental appraisal report.

If the first fee appraisal report that you looked at was inadequate, and failed to supply information or sufficient information, you would then move on to the next fee appraisal report?

Mr. HUNNEMAN. I would.

Mr. MAY. And if it happened to be the case where this second fee appraisal report was not too bad, you might couple that with what you learned from the departmental appraisal report and thereby arrive at a maximum figure?

Mr. HUNNEMAN. That's correct.

Mr. MAY. The point I wanted to make here is that although you had looked at an inadequate fee appraisal report, you did not rush out to Mr. Dole and exclaim about that report?

You did not say, "Do not use this man any more." It was simply set aside?

Mr. HUNNEMAN. That's right.

Mr. MAY. You did the best you could with the information that you had?

Mr. HUNNEMAN. Correct.

Mr. MAY. Mr. Dolben, did you function in about the same manner?

Mr. DOLBEN. Entirely so.

Mr. BALDWIN. Mr. Chairman, I would like to ask a question, if I may.

Mr. BLATKIN. Mr. Baldwin.

Mr. BALDWIN. Mr. Hunneman, let's go to a specific case.

Mr. Beasley brought out, and showed to this committee, a set of charts that showed that as a whole the fee appraisers' reports, the valuations in those reports, were very closely related to the report originally made by the Department of Public Works; that is, there was not a material variance.

But then his chart showed a tremendous variance in the case of the Charpentier property and the Damort case, an astounding variance.

Now, when these two particular cases came before the board did not this tremendous discrepancy between the departmental report and the three fee appraisers' reports, as compared to the general experience of the board that they all closely paralleled each other, indicate to you that something was wrong?

MR. HUNNEMAN. No, I don't think so. Of course, I don't know what these charts showed. But there have been—the department reports in there, with the figures on them, might have been very considerably below the independent appraisers' reports, and there was nothing wrong at all except for the fact that the department was dealing with a piece of property which—where the land was a large part of the value and they put on what seemed to them a reasonable figure for it.

But I don't think they did it on the basis of any comparative values at all. So you could have that situation.

MR. BALDWIN. Mr. Dolben?

MR. DOLBEN. Let me answer your question this way: At least in one case that you mentioned, which has now been in the papers, we did question the value and asked for another appraisal. Is that right, Mr. May?

MR. MAY. Yes, sir.

MR. DOLBEN. And then you know what happened from then on.

MR. MAY. Well, we are getting a little bit ahead, but we may talk about the Charpentier case and the Damort Realty case. In that particular situation you had a departmental appraisal report for \$54,000. You had a fee appraisal report for \$65,000, and other fee appraisal report for \$67,000. Now those figures are in a reasonable range, and are fairly close together, and yet the review board did ask for another appraisal in that case.

When we discussed this matter, with both of you gentlemen in Boston, separately, Mr. Hunneman pointed out—going back over the reports—he said, “Initially, judging from all the reports, the whole thing might have looked high to the board members, causing us to ask for another appraisal.” Is that right, Mr. Hunneman?

MR. HUNNEMAN. That's correct.

MR. MAY. You pointed out thereafter you did ask for another appraisal, back came Mr. Lawton's appraisal for \$60,000. It kind of fit right into the range of the figures previously obtained. And you said, when you got Mr. Lawton's appraisal, it listed Mr. Lawton's qualifications, showing that he had broad appraisal experience, dating back to 1920.

And you said, Mr. Hunneman, that in view of Mr. Lawton's qualifications, you would not question his competency although Lawton's figure for rent seemed high, but presumably the man knew what he was talking about. So you accepted Mr. Lawton's appraisal as being reasonable.

MR. CRAMER. May I ask a question, Mr. Chairman?

MR. BLATNIK. Mr. Cramer.

MR. CRAMER. Did you know that Mr. Lawton had never made an appraisal before that time?

Mr. HUNNEMAN. I had never heard of Mr. Lawton until this case cropped up.

Mr. MAY. Now we spoke with you, Mr. Dolben, about the same matter, and you said that the board was not satisfied initially; perhaps it was the depreciated value of the warehouse or maybe the fact that the State reports showed that the owner had only paid \$20,000 for that property 2 years before.

You said that when the additional appraisal by Lawton came in for \$60,000 it looked reasonable enough on its face, and you assumed that from his listed qualifications that he was knowledgeable and familiar with the area.

He also pointed out, and I quote: "We can't keep sending them back forever." Is that right, Mr. Dolben?

Mr. DOLBEN. Yes, sir.

Mr. MAY. So the board was concerned initially. The board asked for another appraisal. It came back in that same range and the board established a figure of \$60,000.

Now I think it should be pointed out, so that everybody will understand, that the 8- or 10-appraisal reports that you might consider in any given morning would not necessarily all be from the same geographical area of the State. Is that right?

Mr. HUNNEMAN. That's correct.

Mr. DOLBEN. That is correct.

Mr. MAY. And not the same property. Correct?

Mr. DOLBEN. That is correct.

Mr. MAY. You might consider a property in Attleboro, maybe another one in Springfield, maybe another one in Worcester, and maybe another one in Peabody, all in the same morning?

Mr. HUNNEMAN. That's true.

Mr. MAY. So you had no basis for establishing market value on a given project in a given area from the appraisal reports. Is that true?

Mr. HUNNEMAN. That's true.

Mr. CRAMER. Will you yield? Yesterday we had a series of cases in which the identical information was contained in the department of public works' appraisal even to the comma, even to the parenthese, even to the abbreviations, even to the mistakes, as counsel said, and that is the departmental appraisal.

And the fee appraisal had precisely the same information, as I say, even to the comma and every detail and even to the mistakes. Now those appraisals, both departmental and fee appraisals, were before you at the same time. Now did you detect any of those?

Mr. HUNNEMAN. We certainly did. We took them in to Mr. Dole's office.

Mr. CRAMER. Could you give me some examples? What did you you detect and what did you do about it?

Mr. HUNNEMAN. Well, I guess we detected about the same thing, but I take the department first, and I open it and——

Mr. CRAMER. What case are you talking about?

Mr. HUNNEMAN. I don't—I can't——

Mr. CRAMER. All right.

Mr. HUNNEMAN. There was only one of these, to the best of my knowledge.

Mr. CRAMER. Do you want to name the appraisers involved?

Mr. HUNNEMAN. No, I couldn't tell you.

Mr. CRAMER. Was it Mr. Barca? Is that name familiar?

Mr. HUNNEMAN. I remember we had Barca, but whether he was on this or not, I can't tell you.

Mr. CRAMER. Well, what did you do?

Mr. HUNNEMAN. I opened this and I saw the figures. It was a fairly small amount, I remember that, relatively speaking. And then I took—when I turned to the first report and opened it, and started to read it, and got over to the calculations, this thing looked like what I had already seen. So I realized, naturally—so then curiosity got the best of me—that it was the same thing. I imagine Mr. Dolben or Mr. Durant or Mr. Connor hit it about the same time as I did, but we tossed it aside and took them to Mr. Dole.

Mr. CRAMER. About when was this, Mr. Hunneman, or Mr. Dolben, either one?

Mr. DOLBEN. I don't remember when it was, but I remember the instance very, very clearly, because—

Mr. CRAMER. Was it only one instance now like that?

Mr. DOLBEN. There is only one that really comes to mind, where the mistakes were the same. The mistakes were the same and we took that in to Dole and said, "Here, here is"—

Mr. CRAMER. Who did you take it to?

Mr. DOLBEN. Mr. Dole and said, "Here is a fellow you should never use again."

Mr. CRAMER. You don't remember his name?

Mr. DOLBEN. I think it was Barca but I am not sure.

Mr. CRAMER. Barca. And, in other words, as you recall, there was only one instance where you detected—

Mr. DOLBEN. Well, I am not sure whether there was more than one with the same fellow, but I remember there was one, very, very clearly, and those were identical.

Mr. CRAMER. And what was done about it?

Mr. DOLBEN. We said, "As far as we are concerned, take this fellow off the list."

Mr. CRAMER. Did they go back after another appraisal or what? What does the record show on that?

Mr. DOLBEN. I don't remember on that. I don't remember the case, but I remember the instance.

Mr. CRAMER. Did they go back and get new appraisals or what, counsel?

Mr. MAY. No, sir. The figures were established on those properties, apparently, based on the other appraisals.

Mr. DOLBEN. I imagine so. I don't remember the property at all, but I do remember the incident.

Mr. CRAMER. Well, that would seem to be one area where, that if you see exact duplications—

Mr. DOLBEN. We did that.

Mr. CRAMER. Of the department's appraisal, as compared to three of the fee appraisals, it ought to put you on notice that something is wrong.

Mr. DOLBEN. We did.

Mr. CRAMER. As I understand, there were a number of such instances and you only caught one. Is that it?

Mr. DOLBEN. Well, there was one that sticks out in my mind. Whether there was more than that one I can't remember.

Mr. MAY. Actually, our analysis showed that Mr. Barca used identical information to the State's appraisal reports in 20 separate cases.

We do understand from Mr. Dolben that after the review board called his attention to the identical reports that Mr. Barca was giving, no additional work was given to Mr. Barca, which would indicate that maybe some 19 slipped through unnoticed.

Mr. CRAMER. Well, how about the area that Mr. Beasley testified to, where you had proposals with a lot of boilerplate in them, a lot of stock stuff, that anybody could get, and with a single page of analysis, and then the analysis, based upon, in many instances, only one method of evaluation, that is depreciation? Did that come to your attention?

Mr. HUNNEMAN. I didn't hear that testimony.

Mr. CRAMER. Such as the Jacobs' appraisals.

Mr. HUNNEMAN. I think most of Jacobs' appraisals were fairly well written.

Mr. SCHERER. What?

Mr. HUNNEMAN. I think Jacobs' appraisals, that I saw, and I will put it that way, because not all of us attend every meeting, were neat and fairly well put together.

They had the boilerplate in the front they got from the statehouse, his monographs in the different communities, and he put that in. That is several mimeographed sheets that tells a good deal about the community, its population, and various things. I think it is more than one needs, but I don't think it should be criticized for being put in.

Mr. CRAMER. Shouldn't it be criticized though if he only has one single page of analysis telling as to how he came to his conclusions?

Mr. HUNNEMAN. I would hesitate to answer that categorically.

Mr. CRAMER. Well, it has been testified by Mr. Beasley that that is not the proper practice. Do you think that is the proper practice?

Mr. HUNNEMAN. I can't tell. It depends on what property you are dealing with. These things—it's like this applicability of the three recognized approaches that we used, if you think they are useful as guides to value. I, for one, have never, for example, seen any justification for taking the cost approach, replacement cost plus depreciation, plus the land on an old house, because you can't tell what the depreciation is.

Nobody can tell you. Anybody's opinion would be as good as the next. So I don't think that is useful in that type of property.

Mr. CRAMER. Did you turn down any appraisal—did any come to your attention that were based on depreciation in those kind of properties that you turned down?

Mr. HUNNEMAN. I don't—I don't think of any—I can't think of any single house properties where they based the figure primarily on the depreciated replacement cost.

Mr. CRAMER. If you had found them you would have turned them down?

Mr. HUNNEMAN. Well, if it was just in that alone.

Mr. CRAMER. That is right.

Mr. HUNNEMAN. I probably would have paid no attention to it. I might have depended on the department or the other appraisal. You see, in most cases we had two independent appraisals.

Mr. MAY. Mr. Hunneman, apparently Mr. Jacobs' reports seemed all right to you.

Mr. HUNNEMAN. Yes.

Mr. MAY. Of course, you had to assume the information set forth therein was true?

Mr. HUNNEMAN. That's right.

Mr. MAY. In other words, an appraisal might be fraudulent but it is not fraudulent on its face, is that right?

Mr. HUNNEMAN. That's absolutely so.

Mr. MAY. Is that right, Mr. Dolben?

Mr. DOLBEN. That is right.

Mr. BLATNIK. That is what disturbs me, when we come to the crux of the thing.

To use an analogy, which may be pertinent, it would be like a doctor trying to prescribe medication or therapy to a patient, based on the chart which the intern has made and on which he has placed a diagnosis.

The doctor takes the diagnosis at face value and the intern is either incompetent or inexperienced, if that is so, a false diagnosis is there, but yet the doctor proceeds as though that were a bona fide, accurate diagnosis, and thereupon prescribes. You are in a rather similar situation. You had no way whatsoever—

Mr. HUNNEMAN. I think that is true.

Mr. BLATNIK. Of determining how good it looked, how reasonable it looked, or how well it was put together.

You merely moved, from then on, on the assumption that these were the true facts, as true as humanly possible. You proceeded from that and never did break through, in terms of whether or not any of the documentation was false or the estimate or the diagnosis was incorrect or faulty.

Mr. HUNNEMAN. That's correct.

Mr. BALDWIN. May I ask a question at this point, Mr. Chairman?

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. Mr. Hunneman, now that this has been brought to light, that there is this great loophole which has aggravated and encouraged this kind of condition to exist, it seems to me that the Massachusetts Review Board cannot continue to function this way, knowing that there is this great incentive to people, who want to take advantage of it, to defraud.

Now since you are on the review board and you have seen what has happened, do you have any recommendations as to what steps the State of Massachusetts can take to correct this situation?

Mr. HUNNEMAN. I might say that I am not well qualified to discuss the mechanics within the department of public works, because I don't, any more than any other member of the review board is concerned, I really don't know what their systems are and so forth.

However, they have begun—I don't know how far it has gone—to have some fieldmen from the department, staffmen, go out and look at properties. That is correct, isn't it, Al?

Mr. DOLBEN. It is.

Mr. HUNNEMAN. And they are also now giving us, in these independent fee appraisers' reports, a checksheet which, I think, is probably a review appraisal within the department of public works. Isn't that what it is?

Mr. DOLBEN. Oh, yes.

Mr. HUNNEMAN. That is with their own staff, and they have several of them now, and they will review appraisals. And now, it is a checklist. It really deals with the adequacy of the form and so forth. It will check his mathematics.

There are probably 40 questions on that. So now when we open one of these reports we will find, stapled into the cover in practically every one, this checksheet by one of these two or three review appraisers. It is helpful.

Mr. BALDWIN. I would like to ask Mr. Dolben: Did you desire to comment on that?

Mr. DOLBEN. Well, I understand currently they do have field reviews made. I do want to make a comment on the so-called checksheet, and that is that at the moment it is our feeling that public roads is, perhaps, more desirous of having a technically correct format of any appraisal through this checklist than getting at the right answer.

I mean, just a checklist, in itself, is a guide, surely, but it isn't a guide to judgment.

Mr. BALDWIN. What would you recommend to correct this condition?

Mr. DOLBEN. Well, I think it is being corrected through the field review, which is now going on, as we understand it.

Mr. McVEY. Mr. Chairman.

Mr. BLATNIK. Mr. McVey.

Mr. McVEY. I would like to ask the gentleman what procedure the review board is taking now.

Are you using the same procedure now that you used before or, in the light of all this knowledge—

Mr. DOLBEN. Well, coupled with the fact that currently in the bulk of—I don't know what the date was—we are now adopting the public roads procedure on a field review.

Mr. CRAMER. May I ask a question?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Under the Constitution, of course, the property owner is entitled to receive the fair market value for his property. Isn't that right?

Mr. DOLBEN. That is right, sir.

Mr. CRAMER. Not the maximum value?

Mr. DOLBEN. That's right.

Mr. CRAMER. The fair market value?

Mr. DOLBEN. That's right.

Mr. CRAMER. What solution do you seek to the problem of your fixing the maximum value and the negotiator using that, rather than the fair market value, in negotiating with the property owner?

Mr. DOLBEN. Well, again, it is a question of whether you have got honest and capable negotiators.

Bear this in mind, too, sir, that we have been looking or hearing testimony on one side of the fence, and I don't know that everyone has been satisfied—

Mr. CRAMER. I assume they have not.

Mr. DOLBEN. I just don't think they have, but they have the remedy of going to court.

Mr. SCHERER. Mr. Chairman, I just wanted to make this observation, that the questions that have been recently asked by my colleagues really point out the difficulty of legislating against incompetency, dishonesty, and abuse of political power.

Mr. DOLBEN. That's right. That is a very fair statement.

You can put all the checks and balances you want, but if you have got the incompetency or dishonesty, it is going to sift through somehow.

Mr. MAY. Proper controls may have a lot to do——

Mr. DOLBEN. It will help.

Mr. MAY (continuing). As serving as a deterrent to those people who are dishonest and incompetent.

Mr. DOLBEN. I will agree.

Mr. SCHERER. That is true.

Mr. CRAMER. You have to have a desire on the part of your enforcement officials, too, to do something about it when they know something is wrong, at the same time.

Mr. SCHWENGEL. Mr. Chairman.

Mr. BLATNIK. Mr. Schwengel.

Mr. SCHWENGEL. I would like to ask a question of both of these gentlemen. What kind of statement did you have—or what kind of a report did you have to make or statement did you make after you reviewed these cases that came before you?

Mr. DOLBEN. Do you want to answer that?

Mr. HUNNEMAN. Well, I can't quote it verbatim. We have a certain form that is made for us. It is a mimeographed sheet.

Mr. SCHWENGEL. Do we have a copy of that certificate, Mr. Chairman?

Mr. MAY. I believe so.

Mr. SCHWENGEL. I would like to have that read into the record. I think this might reveal something.

Mr. HUNNEMAN. That will be far better than my trying to give it to you.

Mr. MAY. Mr. Hunneman and Mr. Dolben, while we have—well, we have it here now.

This would be a typical case, I believe. This one is dated February 26, 1960. It is directed to Anthony DiNatale, commissioner, and it reads:

DEAR COMMISSIONER: We, the undersigned, have reviewed the appraisals made by the department of public works—

and then it is signed with the city and town, and it says Attleboro over on the right, and it says parcel and it lists three parcels.

As a matter of fact, it is the Damort Land Corp.

We have concluded that the department of public works should not allow more than \$60,000 for damages for this parcel as of taking plus 4 percent interest from date of entry and proportionate taxes for the calendar year——

and it is signed by four members, Connor, Hunneman, Dolben, and Durant.

Mr. HUNNEMAN. That is not the latest. We have since, about last June, used one with a—the larger statement at the top.

Mr. MAY. Well, this new one would be in compliance with the new requirement?

Mr. HUNNEMAN. Yes; it is the same general thing.

Mr. SCHWENGLE. Will be in in compliance with what? With the Bureau of Roads?

Mr. MAY. No, the State. I believe, according to your new contract, there is a requirement now that you set forth the reasons or that you give the reasons for arriving at this particular figure?

Mr. HUNNEMAN. The basis, yes.

Mr. CRAMER. Do we have an extra copy of that? What reasons do you set forth?

Mr. HUNNEMAN. Well, we set forth the basis on which we arrive at a value. It will——

Mr. DOLBEN. It says, in effect, and I can't quote it verbatim, that we have examined the evidence before us and we have considered the three common approaches to the value, but we have called upon our own judgment and experience, and we have arrived at a composite figure, beyond which the State should not go or the department of public works should not proceed, except as otherwise changed by some court of competent jurisdiction, or words to that effect.

Mr. CRAMER. And that reason is always the same?

Mr. DOLBEN. Are the same; yes, sir.

Mr. CRAMER. The same series of reasons are always the same. You do not go into specifics as they relate to specific cases.

Mr. DOLBEN. That's right, sir.

Mr. CRAMER. So that is just a sort of format compliance?

Mr. DOLBEN. That's right, sir.

Mr. CRAMER. It is a disclaimer that you have, in effect, done everything that you were supposed to do, without relating it to any specific facts in that specific case?

Mr. DOLBEN. That's right, sir.

Mr. CRAMER. Well, what does that accomplish? That says you are doing what you were supposed to do, but it does not give any reasons relating to a specific piece of property.

Mr. SCHWENGLE. Mr. Chairman?

Mr. CRAMER. May he just answer that question?

Mr. SCHWENGLE. I'm sorry—excuse me.

Mr. CRAMER. What good does it do if it is just a boilerplate statement that says you are doing what you were supposed to do? It does not relate to any specific reasons, for instance, why this property is of greater value.

Mr. DOLBEN. May I answer that? This figure, which comes out of the review board, is a composite figure.

Mr. CRAMER. Of the three appraisers.

Mr. DOLBEN. Of the three appraisers and of the fourth——

Mr. CRAMER. And your judgment as well.

Mr. DOLBEN. Our judgment as well. Now, the composite figure could be arrived at through several different processes of reasoning, you see. So that being a composite figure, just how are you going to do that? We gave this a lot of thought.

Mr. CRAMER. Well, the legislation under which you are operating requires you to state the reasons why you came to that composite figure. Right?

Mr. DOLBEN. And we have done that.

Mr. CRAMER. And a stock statement that you used your own judgment and so forth?

Mr. DOLBEN. That's right.

Mr. CRAMER. And so forth, and so forth, and I just wondered if that complies with the statutory requirement?

Mr. DOLBEN. Well, we feel that it does, and we don't feel that anything more elaborate would serve any better.

Mr. SCHWENGEL. Mr. Chairman?

Mr. WRIGHT (presiding). Mr. Schwengel?

Mr. SCHWENGEL. I would like now to ask counsel if he has a copy of the kind of report that the State filed with the Bureau of Public Roads to meet the requirements of the law in this regard or the regulations set out by the Bureau? Do we have a copy of the statement? Do we have a copy of the statement that can be filed, and do you have a copy here that can be read into the record at this point?

Mr. MAY. It has been read into the record; that is through Mr. Stevenson's testimony, Mr. Congressman. We do not have a copy. We will get it and put it in the record.

Mr. SCHWENGEL. I think it ought to be put in the record at this point, and I ask unanimous consent that it be put in the record.

Mr. WRIGHT. Right. Without objection, that document will be put in the record as exhibit No. 29.

(The aforementioned document was marked "Exhibit No. 29" and will be found in the files of the subcommittee.)

Mr. SCHWENGEL. Now, I would like to say, Mr. Chairman, that that statement that they signed says that "We have reviewed facts," when in fact you testified for us that you did not review.

Mr. HUNNEMAN. I think that is "review"—in a different sense though.

Mr. SCHWENGEL. Well, I just want to call attention to the inconsistency.

Mr. MAY. Perhaps, Mr. Hunneman, a better word would have been "considered."

Mr. HUNNEMAN. I think that would have been a better word.

Mr. SCHWENGEL. You signed the statement "we have reviewed" that has just been read into the record.

Mr. WRIGHT. The statement is that—

We, the undersigned, have reviewed the appraisals made by the department of public works.

More specific terminology might have been "have examined" or "compared," because you had not, in effect, gotten a review of the appraisals from the standpoint of ascertaining their validity, had you?

You had not reviewed the appraisals when you signed the statement, from the standpoint of ascertaining their validity or accuracy, had you?

Mr. HUNNEMAN. No.

Mr. WRIGHT. Or the adequacy of the appraisal?

Mr. HUNNEMAN. No.

Mr. WRIGHT. So that what you really had done had been only to receive written appraisals, to compare them, to consider them together?

Mr. HUNNEMAN. Yes.

Mr. WRIGHT. And in light of the several appraisals, to pass on a judgment as to what would be the outside figure. Now, did it never occur to you, under the circumstances, that some of the appraisals were inordinately high?

Mr. HUNNEMAN. No. We had a few like that, one where we sent out for that appraiser. It just seemed high to us.

And so we called for a third, and then he came; apparently, a well-qualified man.

Mr. WRIGHT. But the third appraiser, in certain instances which have been paraded before the committee, apparently was a party to the conspiracy and the calling for the third independent appraisal was of no effect.

Mr. HUNNEMAN. All it did was to confirm the figures of the first two, and it was just the worst thing that could have happened from our point of view, and——

Mr. SCHWENGEL. Mr. Chairman, it is rather evident here that these gentlemen could have sent their secretaries and they would have done just as good a job.

Mr. WRIGHT. Probably a better job, because the secretaries would have been, presumably, serving the State of Massachusetts instead of independent interests.

Mr. CRAMER. Well, the legislature, Mr. Chairman——

Mr. WRIGHT. Mr. Cramer.

Mr. CRAMER (continuing). Apparently has provided these gentlemen with a function a little more significant than being merely paper shufflers.

They look at what they have before them and they shuffle them, and they decide between the three what they think, based on exactly what they had before them, the maximum value should be, and not the fair market value.

So the legislature has given to these gentlemen the authority to do little more than to shuffle the papers and to come up with a maximum figure.

And the department of public works has done nothing to fill the obvious gap and loophole, as required by the Bureau, of having review appraisers.

As I understand it, this board, as constituted by the legislature, does not have the duty to review the appraisals as such, although the name would imply they did.

So the legislature is delinquent in setting it up this way, and the Bureau is delinquent to the department of public works in not seeing it is an obvious delinquency and doing something about it.

Mr. WRIGHT. The Chair quite agrees with the gentleman from Florida. It is appalling to observe that the people of Massachusetts probably were relying upon these eminently qualified men to assure them that no wrong would be performed.

There was a glaring loophole, quite obviously, in the procedures of review established by the State of Massachusetts.

This loophole was not discovered by the review board. This loophole was not discovered by the honest people in the department of public works for the State of Massachusetts——

Mr. CRAMER. Crooks.

Mr. WRIGHT. This loophole was not discovered by the Bureau of Public Roads, but the crooks found it. The dishonest men found the loophole, and this is a saddening and shocking commentary, it seems to me, that those people, charged with the responsibility of protecting the public interest, did not discover the loophole which was so huge that you almost could drive a truck through it, but the dishonest people did.

Mr. MAY. I would like to make the last document we mentioned, the review board's findings, as exhibit 30, Mr. Chairman.

Mr. WRIGHT. Without objection, it is so ordered.

(The aforementioned document was marked "Exhibit No. 30" and will be found in the files of the committee.)

Mr. MAY. We have seen, Mr. Hunneman, that if appraisers got together, to include people within the department of public works, so that particular departmental appraisals were altered—if the appraisers all got together and submitted what might be, on its face, each an adequate appraisal report, the review board would be able to determine nothing wrong.

Mr. HUNNEMAN. That's correct.

Mr. MAY. Nor would anyone else at that point.

Is that right?

Mr. HUNNEMAN. That's right.

Mr. MAY. Is that right, Mr. Dolben?

Mr. DOLBEN. Yes, sir.

Mr. MAY. I think we should point out that when the board was originally established there was considerable amount of downtown Boston property to be taken for the central artery.

Mr. HUNNEMAN. That's right.

Mr. MAY. Now, you people were eminent people in the real estate field in Boston. You were familiar with those properties. You were familiar with the places in that area. And you, apparently, did a most satisfactory job because the board was kept in existence.

So you continued on with your work, but now you became involved in takings throughout the State of Massachusetts. Soon thereafter you were considering properties in Chicopee, Springfield, Attleboro, Peabody, Gardner, Worcester; and in those areas, despite your long experience in Boston, you were not familiar with properties in those various geographical areas. Is that right?

Mr. HUNNEMAN. That's right.

Mr. MAY. You were not conversant with the values in those areas?

Mr. HUNNEMAN. That's correct.

Mr. MAY. And so, now, you had to rely completely on the information that was submitted to you?

Mr. HUNNEMAN. That's correct, sir.

Mr. MAY. Is that right, Mr. Dolben?

Mr. DOLBEN. Yes, sir.

Mr. MAY. Now, we have talked about the mechanics which took place when you did sit. In some cases when you were not satisfied with the format or content of a particular report it might have been that there would be enough information in the combined reports so you could establish a value.

Mr. HUNNEMAN. That is so.

Mr. MAY. Is that right, Mr. Dolben?

Mr. DOLBEN. Yes, sir.

Mr. MAY. Now, sometimes, even in considering all the reports submitted to you initially, you were not satisfied. You felt that, maybe, "We should get another appraisal report." And so you would ask on those occasions for another appraisal report.

Mr. HUNNEMAN. That's true.

Mr. MAY. Who would assign the appraiser?

Mr. HUNNEMAN. I don't know. We simply asked for another appraisal.

Mr. MAY. You would make a request to Commissioner Dole?

Mr. HUNNEMAN. Yes, sir.

Mr. MAY. And thereafter another appraisal would be gotten. Suppose this case: Suppose you received a fee appraisal report for \$124,000, another fee appraisal for \$120,000, and a departmental report for \$24,000, \$100,000 off, would you be prone to ask for another appraisal in that case?

Mr. HUNNEMAN. I think we would first read them and see why there was a big spread, and there is a case which could well illustrate what happens if it is a property where land represents a large part of the value. Land prices vary enormously.

It could be that we would have that spread, but where the department man isn't going out and getting comparable figures, he might not know, for example, that on Route 128, around there, values are skyrocketing.

Mr. MAY. If it were not evident why the discrepancy existed, in all likelihood you would ask for another appraisal?

Mr. HUNNEMAN. Yes; that is pretty high.

Mr. MAY. We will see later on in the hearings why that will become important. As you sat over the years you became familiar with the work of certain fee appraisers, did you not?

Mr. HUNNEMAN. Yes. Of course, there were some local men in Boston that we all know and have known long before the board started to sit, and then we became familiar with the work of a number of them, but there were many appraisers—

Mr. MAY. I was getting to the point that, when talking with you, Mr. Hunneman, you mentioned that maybe some—you called them "country men" might be experienced enough and known sufficiently well to you, so that he would establish a value which you would consider as being quite good, despite the fact that his report might not be thoroughly documented.

In other words, the report itself might not satisfy a reviewing appraiser, but you knew the person, relied on his judgment, and would consider his figure?

Mr. HUNNEMAN. That's correct.

Mr. SCHWENGEL. Mr. Chairman, I would like to ask a question.

Mr. WRIGHT. Mr. Schwengel.

Mr. SCHWENGEL. If we have figures on the amount of money that has been paid these people who served on this board—that is my question.

Mr. MAY. No, Congressman. The Federal Government does not participate in the cost of running the real estate review board, and we did not get those figures.

Mr. SCHWENGEL. I would like to ask unanimous consent that they furnish these figures and that they be placed in the record at this point.

Mr. WRIGHT. Is there objection to the request?

Hearing none, it is so ordered.

(The aforementioned information is retained in subcommittee files.)

Mr. WRIGHT. Now, may the Chair inquire as to the proper source of such information?

Mr. SCHWENGEL. I assume that their records would show in the State somewhere how much money is paid and to whom.

Mr. MAY. I would assume the department of public works would be able to produce that.

Mr. HUNNEMAN. They must have it. We bill them.

Mr. MAY. That might be a point worth discussing.

About how much money—

Mr. DOLBEN. You want me to guess? And it is only a guess. I would say that the highest year—I am not swearing to it, but the highest year that any individual member might have had might have run as high as \$7,000.

Mr. WRIGHT. \$7,000 for an individual member of the review board?

Mr. DOLBEN. That's right, sir.

Mr. SCHWENGEL. Per year?

Mr. DOLBEN. I said the highest year. That is my impression.

Mr. SCHWENGEL. And you testified that you meet most of the time half a day?

Mr. DOLBEN. Yes.

Mr. SCHWENGEL. And you would be paid \$100?

Mr. DOLBEN. That's right, sir.

Mr. SCHWENGEL. That is a day, and twice a week, so that would be \$200 a week roughly?

Mr. DOLBEN. That is correct.

Mr. SCHWENGEL. That is what you were paid.

Mr. WRIGHT. This was a per diem arrangement on which you were compensated?

Mr. DOLBEN. That's right, sir.

Mr. WRIGHT. I think you testified that you were paid on the basis of \$100 a day.

Mr. DOLBEN. No, no; \$200 a day. If it was a half day it was \$100.

Mr. WRIGHT. Two hundred dollars a day. If you met half a day—

Mr. DOLBEN. It would be \$100.

Mr. WRIGHT. You received \$100 each to review these 8 to 10 average appraisals?

Mr. DOLBEN. Yes.

Mr. SCHWENGEL. Mr. Chairman, do we have on the record the fact that all of this board came from the city of Boston?

Mr. WRIGHT. Is it true? Let me inquire of the two witnesses.

Were all of the members of the real estate review board residents of Boston?

Mr. HUNNEMAN. No, I don't think anyone was a resident of Boston, but we all had our businesses in Boston.

Mr. SCHWENGEL. We all had our businesses in Boston.

Mr. WRIGHT. All of you conducted your businesses in Boston?

Mr. DOLBEN. Yes, sir; in the surrounding area.

Mr. WRIGHT. And when you say the surrounding area you do not mean, as we do in Texas, about 75 miles out or a hundred miles out in the territory; do you? You live in the Metropolitan Boston area for the most part, do you?

Mr. HUNNEMAN. Yes; I live——

Mr. WRIGHT. Do all of the members of the review board live in the Metropolitan Boston area?

Mr. DOLBEN. I would say that it is generally accepted as that. There might be a question on one member in one town, as to whether he is in the metropolitan part or not, but it is close enough.

Mr. WRIGHT. Thank you.

Mr. MAY. Mr. Hunneman, over the years as you sat on the review board, did it ever occur to you that fraud was being committed?

Mr. HUNNEMAN. No.

Mr. MAY. Mr. Dolben?

Mr. DOLBEN. No, sir.

Mr. SCHWENGEL. Mr. Chairman, I would like to ask these gentlemen if they read your fine newspapers in your town about some of these things that were going on on the road system.

Mr. HUNNEMAN. I certainly read them recently.

Mr. SCHWENGEL. And there were some that date back to 1959.

Mr. HUNNEMAN. I don't recall any.

Mr. SCHWENGEL. You don't recall those?

I have a whole fist full of them right here with me, front page articles.

Mr. HUNNEMAN. I don't recall them.

Mr. SCHWENGEL. I certainly hoped that we cannot level the charge at you people, that you do not read the newspapers.

Mr. HUNNEMAN. Well, I am sorry, sir. I don't recall those articles back——

Mr. SCHWENGEL. National magazines had stories about what was going on in Boston.

Mr. HUNNEMAN. I am sorry——

Mr. SCHWENGEL. It is one of the finest cities in America.

Mr. HUNNEMAN. I am sorry. I read no national magazine except business magazines. We have so much in our business that I have no opportunity to.

Mr. SCHWENGEL. You do subscribe to some of the fine newspapers in that community; do you not?

Mr. HUNNEMAN. What?

Mr. SCHWENGEL. You do subscribe to some of of your finer newspapers in your community?

Mr. HUNNEMAN. We receive at home the Christian Science Monitor every evening, and I get the Wall Street Journal at my office in the morning.

Mr. SCHWENGEL. You do not take any local papers?

Mr. HUNNEMAN. There is a Milton Record, a little weekly newspaper we get.

Mr. SCHWENGEL. You do not take any one of your fine——

Mr. HUNNEMAN. The Morning Herald comes to us by mail, but I never see it in the mornings, because there is no delivery service out there for a morning paper.

Mr. SCHWENGEL. You read that, do you not?

Mr. HUNNEMAN. I do once in a while, but the Wall Street Journal gives me the general news and that is when I get to the office.

Mr. CRAMER. Will you yield?

Mr. SCHWENGEL. Yes.

Mr. CRAMER. Pretty interesting information comes out in the newspapers. I have a paper here, one of the Boston papers, that advises that a contractor is being probed by Federal agents, a widely known contractor, and he is under investigation by Federal agents and they have reported that they have uncovered evidence that the construction firm shortchanged the State and Federal Government in connection with the Federal-aid highway project south of Boston, and the reports indicate that an indictment may soon be returned.

And it goes on to indicate some of the areas that are being investigated and it says the FBI is involved; that there has been moonlighting going on; that the engineers, State engineers, have been on the company's payroll, the same problem we had in the State of Florida.

You can learn a lot from reading the newspapers and, of course, this additional evidence of which, incidentally, I have had some knowledge in advance, plus other matters because of these voluminous newspaper stories, and I am not commenting on the credibility of the information contained therein, but it certainly puts the public on notice as to what some of the problems are, some of the problem areas, and that is one of the reasons why I have insisted throughout these considerations of the Massachusetts situation, knowing these conditions to exist, and here is another example, that this committee not limit its investigation solely to right-of-way matters.

And I think, likewise, as the gentleman from Iowa suggested, that you should be aware of your responsibilities as they relate to this question of right-of-way acquisitions and you should be aware that this committee is likewise on notice of wrongdoings in many areas.

And I would like to ask the staff: Is the staff aware of the situation?

Mr. MAY. It seems to be taken care of quite well, Congressman.

Mr. CRAMER. That is not the point. Are our investigators participating or cooperating in this investigation and, if not, why not, and I want an answer to that question before these hearings close.

And I am serving notice on the chairman and on counsel that I want an answer before these hearings close.

Mr. WRIGHT. May the Chair observe that due notice has been taken of the question and may the Chair advise the gentleman from Florida that the Chair quite agrees that much of newsworthy merit is contained in the daily newspapers, but the chairman thinks there is relatively little to be gained by probing into the reading habits of the members of the board of review or the witnesses.

A little more to the point, perhaps, we might inquire of the witnesses. At what point in time did you first become aware that all was not right?

Mr. CRAMER. Is that all the answer that the Chair has to my request?

Mr. WRIGHT. The present chairman—

Mr. CRAMER. Let me say this. Let me say this. I will not address the question to the present occupant of the chair. I will address it to Mr. Blatnik.

Mr. WRIGHT. And, as the gentleman from Florida——

Mr. SCHWENGEL. Mr. Chairman?

Mr. WRIGHT. If the gentleman from Iowa will desist for one moment.

As the gentleman is quite aware, the present occupant of the chair is not the regular chairman of the subcommittee, and I think it would be inappropriate, and improper, at this point in the hearings to attempt to answer that question.

In any event, such questions should be taken up in executive session and at a timely moment. The present occupant of the chair does not arrogate to himself the right to attempt to answer at this moment for the committee, beyond stating that the committee, as it has done in the past, will continue to probe into substantive matters which appear likely to reveal information of worth and benefit to the subcommittee.

It is not possible to investigate every shred of evidence or allegation in any State. Because of the nature of the hearings we have attempted to approach these matters on topical bases, ascertaining, as in the case of Oklahoma, irregularities which might be somewhat general in the field of underperformance of bid specifications.

As in the case of New Mexico, information which needs to be divulged nationally as to our lack of controls in some of the States to prohibit State employees from enriching themselves at the expense of those whom they are expected to supervise.

In this particular set of hearings the committee confines the inquiry largely to the question of right-of-way acquisition, since this has seemed to be the most glaring situation existing in the State of Massachusetts.

Beyond this, the present occupant of the chair does not presume to state what will be the next action of the subcommittee. And may I suggest that inasmuch as we have a bill of some importance on the floor this afternoon, and inasmuch as there are a few——

Mr. SCHWENGEL. Mr. Chairman?

Mr. WRIGHT. A few more questions to be directed to the witness, we should move on.

Mr. SCHWENGEL. I had the floor when the colloquy began here, and I would like to pursue it for just a moment, if I may.

Mr. WRIGHT. The gentleman from Iowa is recognized.

Mr. SCHWENGEL. I would like to ask the gentlemen if they read the New York Times.

Mr. HUNNEMAN. I practically never see it.

Mr. SCHWENGEL. Well, this is a very fine paper and here are some copies of articles about Massachusetts, sir.

Very interesting. Maybe you ought to read them now. And you say you read the Christian Science Monitor, and I do not have copies here, but I can say to you that that is a very fine paper, and it reports rather adequately, and it has had stories about Massachusetts scandals, and I imagine you can see that headline, can you not?

Now, this is from one of your own fine papers, and if you do not read it you ought to. This is the Boston Traveler.

Mr. HUNNEMAN. I don't get the Traveler because——

Mr. WRIGHT. Will the gentleman identify these papers he is holding up for the record?

This is the "Boston Traveler," of what date?

Mr. SCHWENGEL. This is 1960.

Mr. WRIGHT. What date in 1960?

Mr. SCHWENGEL. May of 1960.

Mr. WRIGHT. May of 1960.

Mr. SCHWENGEL. Another one——

Mr. WRIGHT. Will you identify the New York Times?

Mr. SCHWENGEL. August of 1961.

Mr. WRIGHT. August of 1961.

Mr. SCHWENGEL. And there is another one, August 18 of 1960, the Boston Traveler.

Mr. WRIGHT. This may be pertinent in relation to the question the Chair posed a few minutes earlier, as to the point in time when the members of the review board became aware that irregularities were occurring in right-of-way acquisitions in Massachusetts.

Mr. HUNNEMAN. Well, I think this may throw some light on it. At some time, and I don't know just when it was, we were told that investigators were in the department of public works.

And in due course they came in to see us; asked for some of the material and notes, which we were very glad to give them.

Just what or whom they were gunning for, I didn't know—I don't know. I didn't know then. I don't realize now.

Mr. WRIGHT. Is the witness saying that the first he realized the existence of wrongdoing in right-of-way acquisition in the State of Massachusetts was when he was advised that representatives of the Department of Public Roads were investigating these matters?

Mr. HUNNEMAN. No. It was when—well, when I guess somebody from the Department of Justice called up from the U.S. attorney's office, and asked if he could see my notes, and I told him he was more than welcome to.

And he said, "Can I come over?"

And I said, "We don't even keep them here. They are down at the department of public works, and you go on down." How far back that was, I don't know.

Mr. WRIGHT. To the best of your recollection, Mr. Hunneman, would you say that was in 1960, 1959, 1961?

Mr. HUNNEMAN. I would say 1960.

Mr. WRIGHT. Perhaps, Mr. Dolben?

Mr. DOLBEN. No; I think as an investigation—you say did that alert us? That investigations were being made—you say, When did we first realize that there might have been some dishonesty? I think I can say to you that it was the first time that anyone was indicted.

Mr. WRIGHT. Early in our hearings we had testimony from a witness named Mr. Beaulieu.

Mr. DOLBEN. Who?

Mr. WRIGHT. Mr. Beaulieu—B-e-a-u-l-i-e-u.

Mr. DOLBEN. Yes.

Mr. WRIGHT. Who stated that he had called Mr. Arthur Wilcox when he first had been approached by Mr. Spagnoletti, and Mr. Harney in what he regarded to be an improper manner.

Did Mr. Wilcox discuss this matter with other members of the review board at that time?

Mr. DOLBEN. To answer your question, the name of "Beaulieu" was not mentioned. The—it lays in my mind that Mr. Wilcox said that

there would be an investigation to start. When that was, I can't remember.

Mr. WRIGHT. Well, Mr. Beaulieu's incident occurred in 1957.

Mr. DOLBEN. Well, the incident—I mean, the followup on that was long after that, as far as I know.

Mr. WRIGHT. But if Mr. Beaulieu called Mr. Wilcox in 1957, and reported to him what he believed to be an improper approach from a representative of the department of public works, would you not think that Mr. Wilcox would report this matter to the other members of the review board?

Mr. DOLBEN. It does not lay in my mind that it was reported that way.

Mr. WRIGHT. May the Chair ask at this time for a brief cessation while the reporter changes the roll of paper in his machine?

(Brief pause.)

Mr. CRAMER. During this period of time in fairly recent years you state that you do not recall reading in the paper evidences of wrongdoings within the department of public works?

Mr. DOLBEN. Of course, they have been in the newspapers, sir.

Mr. CRAMER. Yes, there have been the stories——

Mr. DOLBEN. Yes.

Mr. CRAMER (continuing). And the cases before the courts, and there have been the Worcester case of the \$275,000 kickback. You are familiar with that, are you not?

Mr. DOLBEN. Sure.

Mr. CRAMER. You read it in the paper.

There has been the case of Buckley's report, the State auditor. He is the State auditor, is he not? Buckley?

Mr. DOLBEN. Yes.

Mr. CRAMER. There was his report that there was something rotten in the department of public works, that some contractors were charging for winter work when they did not do winter work and were padding the bills. You remember reading all of that, do you not?

And I think it has been quite evident in Massachusetts that there has been something rotten in the department of public works, and it goes beyond the question of right-of-way acquisition, and if it is bad in these other areas, then it is going to be equally bad, if not worse than the right-of-way acquisition area.

Now, it is obvious that there is not wrongdoing only in one area but there is tremendous evidence on the record of wrongdoing in other areas.

And that is why I asked the counsel, as I did, as to whether we have our investigators investigating this specific instance which has been known for some 6 months, and I gathered from his reply that we do not have.

That is why I raised the question, and I intend to ask the chairman as to why we do not have some investigators in there looking into this.

Now, the present occupant of the chair indicated that the committee operates on a category basis. Well, I would like to have them someday categorize the question of kickbacks.

I would like to have them categorize the question of contracting, and padding their bills, and bilking the public.

Now, those are areas that we have not been into before. From what I understand of the information that has been printed in the newspapers, there is no other place that I know of in the country that has been brought to my attention of where the problems of such gravity exist as in Massachusetts and these other areas.

So you have been carrying out your responsibility on the right-of-way appraisals. A tremendous amount of that information has been in the press over a number of months. And it seems to me it would put you on notice to ask questions and to try to find out what the problem was. And it has not had that effect?

Mr. HUNNEMAN. I—unless I saw something dishonest in an appraisal—I saw no appraisals, barring that one, that was obviously a copy, where mistakes were copied through, and the mathematics—I saw no appraisal I thought was dishonest.

Now, it is perfectly possible—as you know, it could be dishonest if they set out to do so, give you comparable sales—he could invent addresses.

Mr. CRAMER. I grant you that.

Mr. HUNNEMAN. He could have a comparable—we wouldn't know. It never will—we accepted the things as the thinking of the appraiser and his facts.

Mr. CRAMER. And you are saying when you did find absolute duplications, and so forth, you did something about it?

Mr. HUNNEMAN. Yes. And there was only one where there was an absolute duplication. And in that instance it was—I looked at it—regarded it, perhaps, in his thoughts, the right way to do it but just a very stupid and lazy thing.

I don't believe it was conspiring to defraud the taxpayer. It's just an awfully stupid thing to do.

Mr. CRAMER. That is all I have.

Mr. WRIGHT. Are there other questions on my right? On my left? The Chair wishes to thank the witnesses for having been with us.

The witnesses may be dismissed at this time.

May the Chair observe, in connection with the remark of the gentleman from Florida, that there are, indeed, other general areas and categories which the subcommittee has not yet gotten into. The Chair agrees with the gentleman from Florida, that those he mentioned are very important and, in addition to them, the Chair believes there may be reason for the subcommittee as it progresses with these hearings to look into the possibilities of collusive bidding, of which there seems to be some indication that it may have occurred in some of the States.

There are numerous additional areas in which I think might be proper for the subcommittee, given time, to adduce and develop factual cases, as we have done in the past. It might be proper, for one thing, to look into the question of the cost of materials that go into the construction of the roads and the cost of equipment used on the roads and see what has happened to these costs. These things take time if we are to do them properly.

The subcommittee has, to the best of its ability, attempted to develop these cases in a professional and factual manner, and the present occupant of the Chair would like to compliment the staff of the committee for having done what it believes to be a workmanlike and creditable job—

Mr. CRAMER. Oh, I do, too, Mr. Chairman. I want to congratulate the staff on the work it has done on right-of-ways. It is a shame they have been handcuffed and cannot go beyond that. That is the very point. I am glad the Chair agrees with me.

Mr. WRIGHT. May the Chair state most emphatically, most sincerely, most irrevocably—

Mr. CRAMER. I know you did not do it.

Mr. WRIGHT (continuing). That no occupant of the Chair of this subcommittee has at any time, in any way, attempted to handcuff the members of the staff, and the Chair is quite confident that every member of the staff would fully confirm that statement.

We stand in recess until 2:15 this afternoon.

(Whereupon, at 12:45 p.m., the subcommittee recessed to reconvene at 2:15 p.m., of the same day.)

AFTERNOON SESSION 2:45 P.M.

(Present: Representatives Kluczynski (presiding), Blatnik, Baldwin, Clark, Cramer, Edmondson, Fallon, Gray, Jones, Robison, Scherer, Schwengel, and Wright.)

Mr. KLUCZYNSKI. The committee will resume hearings. The committee will come to order.

The first witness, Mr. Max Rosenblatt. Will you please take the stand?

Do you solemnly swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROSENBLATT. I do.

Mr. KLUCZYNSKI. Be seated, Mr. Rosenblatt.

Will you give your name and address for the reporter and for the benefit of the committee, please?

TESTIMONY OF MAX ROSENBLATT, MALDEN, MASS., FORMER ASSISTANT ATTORNEY GENERAL, COMMONWEALTH OF MASSACHUSETTS, IN CHARGE OF EMINENT DOMAIN SECTION

Mr. ROSENBLATT. My name is Max Rosenblatt. I live at 34 Clayton Street in Malden. I have a law office at 25 Pleasant Street in Malden, Mass.

Mr. KLUCZYNSKI. Thank you, Mr. Rosenblatt.

Mr. MAY.

Mr. MAY. Mr. Rosenblatt, did you formerly serve as assistant attorney general for the State of Massachusetts?

Mr. ROSENBLATT. Yes, I did.

Mr. MAY. Who was attorney general at that time?

Mr. ROSENBLATT. George Fingold.

Mr. MAY. When were you appointed?

Mr. ROSENBLATT. I went into office January 23, 1953.

Mr. MAY. Were you placed in charge of the eminent domain section shortly thereafter?

Mr. ROSENBLATT. Sometime thereafter. About 3 months after I was there.

Mr. MAY. When did you leave the attorney general's office?

Mr. ROSENBLATT. I think it was about either January 22 or January 23 of 1959. Mr. McCormack, the newly elected attorney general, came into office—although I served under Attorney General McCormack, too—due to the death of Mr. Fingold in August of 1958.

Mr. MAY. From August through December of 1958 you served under Mr. McCormack.

Mr. ROSENBLATT. Under Mr. McCormack; yes.

Mr. CRAMER. Mr. Chairman, before the questioning of this witness goes further, may I ask a question in an attempt to get some information?

Mr. KLUCZYNSKI. Go ahead.

Mr. CRAMER. Counsel, have we had placed in the record on matters that we have already heard, those instances where the cases in question, where there has been some question raised about value and possible fraud? Have we had placed in the record which of those cases were handled by the attorney general's office as a result of the claiming parties filing the suit?

Mr. ROSENBLATT. May I answer that? No cases that are settled by public works would be in the attorney general's office.

Mr. CRAMER. I am not talking about that. I am fully aware of that. What I am saying is, of those cases we have heard to date in the Attleboro area and other areas where there have been improper evaluations and fraud resulting, that we have on the record, which of those cases were handled by the attorney general's office by court action—either settlement in court or final condemnation in court?

Mr. MAY. Of the cases discussed up to this point in the hearing, Congressman, I don't recall any case that ever reached the attorney general's office.

Mr. CRAMER. Precisely. Now, I assume that these hearings are going to develop additional cases showing irregularities and possible fraud. Isn't that true, counsel? Aren't we going into Worcester and Peabody and Lowell? Aren't we going to have cases in those areas?

I would like an answer, Mr. Chairman. Are we or aren't we, counsel? Why hide it? Aren't our people entitled to know whether we are going into other areas, or is this a limited area?

Mr. MAY. We are going to receive evidence with respect to certain cases in the Worcester area and in the Lowell area; and we may hear some matters pertaining to some cases in Peabody, although we may not go into as great detail in those particular cases.

Mr. CRAMER. And we do not have in the record at this time, obviously, information as to which instances in those three areas there is reason to believe fraud occurred in. So obviously we do not have in the record likewise indications as to cases, those cases in which the committee intends to investigate with regard to possible fraud; which, if any, of those cases were brought to final conclusion through court action, which was the duty of the attorney general's office, now do we?

Mr. MAY. That's right.

Mr. CRAMER. Then how can you interrogate these witnesses? What are they here for at this stage of the hearing? I don't understand how you expect that members of the committee can interrogate these witnesses who had the duty of handling the court aspects of

cases that went to condemnation, whether they were settled in court, or final court judgment was had, to determine the manner in which they were handled. I am not suggesting there were any improprieties, but how can anyone determine whether there was or wasn't or whether the attorney general was or wasn't carrying out his proper function, which is certainly the question we have asked everybody else who has appeared before this committee. Unless we have the specifics as to what cases did the attorney general's office handle in which there was fraud involved in the same way, through improper appraisals, and so forth, how can we do it? What are these witnesses doing? What purpose are they going to serve at this point? That is the question I would like to ask.

I understand that this gentleman is going to testify, and I understand that Mr. Lyons is going to testify, and I think that the committee ought to have before it the specific cases of fraud and wrongdoing at the time that the witnesses appear. I can't get an idea of what is coming in the future and there is no way I can interrogate witnesses with regard to what is coming in the future.

I personally don't think this is the proper procedure, and I offer my objection to it at this point.

Mr. MAY. We have discussed situations at the hearing thus far which involve the processing of cases through the department, up through the review board, and we are going forward with the process at this moment to consider those cases that went through the attorney general into court.

Mr. CRAMER. Can you recall any example on the record where there was wrongdoing in a single case that is presently on the record, that was processed through the attorney general's office? I am not implying in any way, and I don't mean to imply, that the attorney general had anything to do with regard to it. Obviously, the record to date does not show anything because there has not been a case that has been presented where wrongdoing occurred that went through the condemnation process.

Let me ask you this, counsel: Is there a single case to come up in the Worcester, Lowell, or Peabody matters that was settled through the attorney general's office, or through condemnation proceedings? Is there one case? I would like a list of them. How many of them are there, and which ones are they?

Mr. MAY. Mr. Chairman, I would ask at this time that we not be forced to reveal all the particular cases that we are going to consider.

Mr. CRAMER. I am not suggesting that. I didn't ask you for names. I asked you if there were any cases.

Mr. MAY. If there are any cases that went through the attorney general into court that we will be discussing, Congressman?

Mr. CRAMER. Yes.

Mr. SCHERER. Handled in any way by the attorney general's office.

Mr. MAY. There have been cases; yes, sir.

Mr. CRAMER. Then I think it is obvious this witness' testimony is premature, unless it is your intention to interrogate him with respect to some matters on general information as to procedures, and recall the witnesses at a future time, at some time when they can testify.

Mr. KLUCZYNSKI. Mr. Cramer, the Chair wants to proceed this way. If the gentleman from Florida wants the witnesses back later, he can have them, and you know it.

Mr. CRAMER. It is not a question of my wanting them, but it is a case of the committee more properly exercising their responsibilities.

Mr. SCHERER. The chairman now made a ruling——

Mr. KLUCZYNSKI. Wait a minute. It is coming from both sides. Let's have it one at a time.

Mr. SCHERER. I understood, and I was going to quote what you said—I understood you made a ruling that if we wanted these witnesses back later we can have them.

Mr. KLUCZYNSKI. Definitely; any time you want them, because they are willing to cooperate with this committee.

Mr. MAY. There is no problem there. Mr. Lyons has been here from the very first day, and Mr. Lyons will continue to be here every day the committee sits in these hearings. This is not surprising. It was developed before the entire body in executive session.

Mr. CRAMER. No, not the timing of the witnesses. We didn't know who was coming. I was assuming anybody who had jurisdiction over any of these matters would be called after the matters were spread on the record. You paraded DiNatale last week at 5:30 in the afternoon, when little or any evidence was on the record that he might have any specific responsibility for it. Since that time we have heard his name mentioned with regard to two or three matters, and it may be well we should interrogate him about it, but you can't do it if the evidence is not on the record at the outset.

I don't understand how you can be expected to ask these persons to answer questions about their responsibility in relating to wrongdoing, if it occurred, unless you know what the wrongdoing is. It is not on the record yet.

Mr. MAY. I would like the record to show I personally sat down with minority counsel, Mr. Robert Manuel, and went over witness by witness——

Mr. CRAMER. The lists.

Mr. MAY. And the information expected to be received from those witnesses in detail, to his satisfaction.

Mr. CRAMER. Did he have anything to say about how the witnesses would be scheduled? Did I have anything to say? Certainly not. And I am sure you don't mean to imply that we did.

Mr. MAY. No, sir; I do not mean to imply that. These witnesses have been scheduled so we can get a chronological flow of testimony, so it will make sense through the hearings.

Mr. CRAMER. But it does not make sense to me.

Mr. MAY. Mr. Rosenblatt was called here and we expect to find out from him how cases were processed through the attorney general's office which he was serving there, and the general nature of the problems.

Mr. CRAMER. Is the counsel going to request he be returned when evidence is on the record of fraudulent cases that he believed to exist, which were handled through the attorney general's office?

Mr. MAY. I don't want to suggest that Mr. Rosenblatt is involved in any way.

Mr. CRAMER. I didn't intend to suggest that there was any involvement, but if in fact fraud occurred, the final fraud had to result from false appraisals. It had to result in fraud in the appraisals and the resultant amount of money paid. And everybody who contributed

in any way to the determination of the final amount of money should be subject to interrogation by the committee.

I am not saying they did anything wrong, but it is up to us to find out whether they did or not.

Mr. MAY. There is no problem. If a witness' testimony becomes necessary as the hearings progress, we will certainly call him. May we proceed?

Mr. KLUCZYNSKI. Go ahead and proceed.

Mr. SCHERER. Wait a minute. You say if it develops, we will then determine whether to call him. I understood that the Chair's ruling was if any minority member asks for the witness to be recalled, he will be recalled.

Mr. KLUCZYNSKI. The Chair talked to the gentleman from Florida and is saying that if he wants these witnesses back later he can have them, and he knows it.

Mr. SCHERER. All right; that's what I understood you to say.

Mr. KLUCZYNSKI. OK, counsel will proceed.

Mr. MAY. Now, Mr. Rosenblatt, could we speak a little bit about your background?

Did you at one time serve in the right-of-way department of the department of public works?

Mr. ROSENBLATT. Yes; I did. I served back in 1935 in the right-of-way department as a right-of-way negotiator. I served a little over 2 years at that time. That was on the project which is now U.S. No. 1—the Newburyport Turnpike.

Mr. MAY. Did you also take a course in blueprint reading, and so forth?

Mr. ROSENBLATT. And appraising; yes; I did. At the University Extension, MIT, at the same time I was working in the field.

Mr. MAY. And while you were with the right-of-way department, did you receive some experience in evaluating and appraising property?

Mr. ROSENBLATT. I surely did there. I had all kinds of property—farm property, gasoline stations, homes, and general property that happened to be in the area. It was a mixed proposition.

Mr. MAY. Did you also receive some experience in the field of negotiating settlement with the property owners?

Mr. ROSENBLATT. Yes, and that was part of our training also. Mr. Briggs, who was then at the head of the right-of-way department, was an elderly gentleman, and he always supervised our appraisals. We would go out and make a complete appraisal of the property and give also a complete description of surrounding properties, and determine what the value was. And in many instances where there was a close borderline case he would go out with us in the field to see how close we were, and then authorize us to make an offer to the petitioner or property owner, I should say.

Mr. MAY. Thank you. Mr. Rosenblatt, did you serve in the city government of Malden, Mass.?

Mr. ROSENBLATT. Yes. I was in public office, elective public office in Malden, from 1931 to 1946, serving as chairman of the board of aldermen in 1943 and also in 1945, and acting mayor in 1943, when our mayor went to the war. I took part of the year as the acting mayor, being chairman of the board.

Mr. MAY. You served from 1931 to 1946 as councilman?

Mr. ROSENBLATT. Councilman and alderman, yes. There were two branches in those days. It was a bicameral form of government. Today it is a unilateral form of government, with only one branch.

Mr. MAY. Mr. Rosenblatt, have you taught a course in eminent domain?

Mr. ROSENBLATT. I have. And when I got through there, by the way, I became assistant city solicitor for 5 years, beginning in 1948-53, at which time I went up to the attorney general's office. I taught the course in eminent domain both in the matter of making appraisals, and the law of eminent domain, at Suffolk University, in Suffolk Law School, for 17 weeks there. I think it was last year, or the year before. I think that it was the latter part of last year or beginning of last year.

Mr. MAY. Now, the attorney general's office would handle land damage cases for the department of public works and for other bodies?

Mr. ROSENBLATT. Yes. The attorney general's office, being a law office of the Commonwealth, would introduce any kind of litigation affecting any of its departments, whether it be the department of natural resources, or MDC, or the maritime commission, public works, or the department of health, and so on. Wherever it was necessary to take private property for public purposes.

Mr. MAY. However, the bulk of the cases received by the attorney general's office from the department of public works would involve takings in connection with highway construction. Is that right?

Mr. ROSENBLATT. That is right.

Mr. MAY. When you began work in the attorney general's office, did there exist a backlog of cases?

Mr. ROSENBLATT. Yes. We came in—if I may bring the committee up on this—we came in under Mr. Fingold's administration. He succeeded Mr. Kelly, and our State was almost in the same unenviable position as it is at the present time, where certain irregularities had crept up, and the attorney general's office was in, let's say kindly, in disrepute, and we had to set up a new system wherein the courts, the superior court—and, after all, that was the only court that had jurisdiction over eminent domain—would be able to sit down with the new attorney general's office on a method of procedure.

So we had to sit down with a committee of judges in the superior court to devise what that system was going to be, and we did that.

When we came in there was absolutely no particular system at all. We devised a system, a docket system, wherein every single case is now docketed, and when it comes into the attorney general's office, what pleadings have been filed, and what conversations, if any, have taken place, and what amounts are being asked, and what has been offered, and what is the final disposition of the case.

Up to that time there was absolutely no record of it at all. We had to devise also forms of interrogatories. There were no pleadings at all. Under our statutory law you are allowed to file 30 interrogatories, but this being a special proceeding in eminent domain, the least number we could devise was 57 interrogatories, and we got the court's permission that the Commonwealth would be allowed to file that number of interrogatories, in excess of the regular statutory number allowed.

Mr. MAY. Were there some 1,800 cases backlogged?

Mr. ROSENBLATT. That's right. In fact, some of them went back to 1946, when I came in, and that was 1953.

Mr. MAY. In your 6 years in office, about how many cases would have come to the attorney general's office—land damage cases?

Mr. ROSENBLATT. About 3,100 that were disposed of. There were more that came in. I would say closer to 4,000, or 3,800 came in, but I got rid of 3,100.

Mr. MAY. Of the 3,100, how many were tried?

Mr. ROSENBLATT. Tried? Well, by tried, if you mean jurywise, there was about 198 of them tried jurywise, but every single case under the 1952 law—that chapter 556 which you had read this morning, section 6 of that act, made it impossible for the attorney general's office, or the public works commission, to dispose of any case over \$2,500 without the written approval of the court at the time of trial. So therefore we had to devise a system. If they were all tried they would be still working on 1956 cases. And the attorney general's office also had to have in mind the cost. Every time a jury is impaneled on a case it costs the Commonwealth as of that time, and it may be higher now, \$750 a day. So therefore we devised a program or procedure, with the approbation of the courts, wherein I would review the case and look over the appraisals.

If they were all right I would go along with them, and if they weren't I would just disregard them. If it were the kind of property that should be investigated by physical appearance, I would go out and investigate it, and then we would go into court and disclose to the court the following procedure: The petitioner would take the stand, and also his appraiser. Sometimes, when a petitioner was too poor, the courts would allow just the petitioner to testify. And under our law a petitioner can testify as an expert, providing you show he has some knowledge of his property. But in most instances the petitioner was forced to bring in his appraiser to give what in their opinion was the value of the property.

Then I would disclose to the court my high appraisal, my low appraisal, my board of review figure, and what I thought the case was worth.

When I would say what I thought the case was worth I would have to work that piece of property out from the first potential dollar to the last dollar that had to be capitalized. Of course, on residential there is nothing to capitalize. It is just the comparable value that you could possibly develop there, but on special-use property you could use two methods—either a capital return, as to what that property can possibly lease out for, or the reproduction less depreciation.

Now, most of our property that was involved, of course, was business property—office buildings and commercial buildings. In that case, of course, you developed the approach—preferably two approaches—the reproduction, although that was not the safe approach, and the capitalization of what that property could possibly earn from its potential dollar to its stabilized dollar after deducting your expenses and then capitalizing whether it be on a 6 or 8 percent, depending on the condition of the property at the time of taking.

All of that would be disclosed to the court, and the court had the right to cross-examine the property owner and in many, many instances they did.

There was a court stenographer present in every single case that was tried, from the first day we got in there, and I would order three copies—two copies I used to send to the department of public works, and one copy to the attorney general's office, which copies contained a transcript of everything that transpired in open court under oath.

Mr. MAY. Mr. Rosenblatt, do I understand that some 198 cases were jury-tried?

Mr. ROSENBLATT. That's right.

Mr. MAY. Do you have some examples of the types of awards that were made in most cases?

Mr. ROSENBLATT. Yes. I think it is only fair to tell this committee how I happened to have these awards. I didn't have this compiled at the time I went out. I had it compiled back in 1955, and that was brought about because there was some difference between my method of doing my job and the board of review.

The board of review used to send me up a green sheet, and on that green sheet would be contained the right-of-way department's figure—the division's figure. The outside appraisals, if there were one or two, and the board of review figure. Just the naked figure.

In studying the appraisals, if they made no sense to me, as I said before, I would throw them out and I would devise my own formula to determine in my own mind what I would be willing to stand by in open court.

The board of review didn't like that practice and they—there was quite a hassle about it and we finally had a conference, and at that time Commissioner Volpe was at the head of it, who is now Governor of the State. He was present at that conference, and Commissioner Dole was present at that conference, and Lester Ellis was present at that conference, and Herb Dodge was present at that conference. Four of the five members of the board of review were present at that conference. And I said to these fellows, these gentlemen, I said, "Now, I cannot use any other system than the system I am responsible for. I can't use you fellows as a crutch if I have no confidence in your figures. I have compiled here a list of cases," I said, "that went jurywise—not jury-way, but jurywise—and these figures show me that you people don't know a good appraisal from a bad appraisal."

Then I started giving them—I said, "This is not from only one section of the Commonwealth, but every county." And I started giving them these cases I had compiled, and these are the cases I had, and you gentlemen ought to follow them to get the complexion of what we were up against.

There was this one case where there was an outside appraisal of \$2,190. The department of public works appraisal was \$2,750. The jury verdict was \$17,500.

Another case, and this is in Barnstable County—I won't give the names because I don't know whether these people are alive or dead—they may be still alive—but I have the names on one side here, but I will give you the county, and if you ask me what they are I will give them to you. All right, if you want it. Because one involves one of the religious denominations, and I would rather not mention it by name.

The next case, the outside appraisal, and, in fact, we had two outside appraisals, one of \$1,650 and another of \$1,400. The department of public works appraisal was \$2,500. The jury verdict was \$5,450.

Another case in Barnstable County, the outside appraisal was \$3,300. The board of review, or public works, came close to this figure, which was \$7,000, and the jury came in with \$8,720, which is a very close batting average on that one.

Another one in Barnstable. The outside appraisal was \$250. The department of public works—and I don't think this is the board of review—but public works was \$100. The jury came in with \$8,000.

Another one in Barnstable. There was no outside appraisal on this—just the departmental appraisal, and they said no damage. The jury thought differently, and they came in with \$4,500.

Now we go to Berkshire. There is a case here where the parties wanted \$10,000. I had an outside appraisal of \$1,000 and the public works appraisal was \$2,000. The jury came in with \$4,700.

I have another one here where they wanted \$8,500 and the public works was \$1,500. There was no outside appraisal in this at all. And the jury came in with \$6,400.

I have another one here, also in Berkshire, wherein the petitioner wanted \$38,000. There was a public works appraisal of \$23,500. I had two outside appraisals, one of \$18,000 and one of \$14,000, and they wouldn't take the figure I suggested and they got \$16,816.

MR. MAY. Would you mention just a couple more, Mr. Rosenblatt?

MR. ROSENBLATT. Right. Here is a case that I would like to have this committee remember that there is more than just the mathematics that go into a case. This is one that is involved wherein the parties wanted \$332,400. I had a public works appraisal on this and a board of review figure on this of \$12,500. I had two outside appraisals of \$22,000, and my second appraisal was \$4,500. And the jury came in with \$97,398.

The mathematics—I personally think that the State was hurt very bad in this case and not rightly so. But the attending circumstances you could not—there are some things that an appraiser could not take into consideration. In other words, this being a religious organization, certain factors go into a case like this by the type of witnesses that take the stand, that the actual dollars-and-cents value of the property is lost sight of by the complexion of the jury.

I have another case here—

MR. CRAMER. Did you appeal that case? You thought it was out of line.

MR. ROSENBLATT. No, I didn't appeal it, and I couldn't appeal. I was afraid I would get hit by something. They were looking for \$332,000. And I had a situation where in the next jury I might buy 12 of one particular religious group and I would maybe get hit by twice that amount.

And let me give you a case that happened, only it was a business piece of property.

MR. SCHERER. Did you try that case?

MR. ROSENBLATT. No. I had one of my assistants try that case.

MR. SCHERER. What proportion of the cases you are citing did you try?

MR. ROSENBLATT. The first year I would try, I would say, at least 20 cases, the first 2 years I was there. And then I found I was making no headway at all, so I then devised this other system of studying the cases and bringing the attorneys down, or, if there was any out in

the western part of the county I would go and line up 10 or 20 cases and go down and stay there 3 or 4 days, and call in the attorneys. And the court would give me one of their unused chambers, and sit down and see if we could not negotiate on these cases.

It was the only way I could handle these cases or I would never have gotten rid of them.

Mr. SCHERER. You are giving us, of course, the cases in which the State of Massachusetts failed to prevail. How do those compare with the other cases you tried? What percentage of the cases you tried did you receive as bad a result as in those you are telling us?

Mr. ROSENBLATT. We received a bad result, but the thing that changed the complexion was that each one of these lawyers knew what figures I had offered them before they went in for trial, and the figures I had suggested in no way were they related to my appraisals, and would come within \$500, or \$1,000, or possibly \$1,500, either up or down, depending on the size of the case. So they decided what was the good of going to trial. We can get the proper hearing before the attorney general's office, and they remembered some of these earlier cases that were on trial.

Mr. MAY. Do you have any others worth mentioning, Mr. Rosenblatt?

Mr. ROSENBLATT. Yes. Here is a case on business property. They wanted \$187,000. I had two appraisals on this one of \$13,216 and another one of \$16,700. The first time that the case was tried the jury came in with no dollars as damages. The second time the case was tried was after I had gotten out of the office, and one of my former assistants was sworn in as a special because he knew the case. Mr. McCormack used good judgment to call him back as a special to try this case. And the second time this case was tried, they got a little over \$16,000.

Now in this case I had offered \$18,500 in spite of these appraisals, and the second time that it was tried they came in with a little over \$16,000. On a motion for a new trial the judge upped the findings of the jury up to \$50,000 plus interest on the motion on grounds of inadequate damage. So that's another thing that had to be considered.

In the attorney general's office they had to concern themselves with it, because the power of the judge on a matter being requested, it can be allowed on a motion for reduction, and it could also be allowed here.

Mr. SCHERER. Witness, do you have any statistics on the cases where the jury brought in verdicts of less than the attorney general offered them?

Mr. ROSENBLATT. Yes; I think I read one to you just before.

Mr. SCHERER. Yes, just one.

Mr. ROSENBLATT. Yes; I had one case that went up to the Supreme Court, come to think of it, since you asked me that. My appraisal had a figure here of \$11,000. And this was considered one of the good appraisers in the State. And I reserved my rights to disagree with them, and I did in this particular case. In reading over the appraisals I called him up and I told him in this case I thought he was ridiculously high and I wouldn't go along with him. And he said, "Max, well, this is a new kind of twist. You are always calling me and telling me I am too low." And I said, "Yes, but," I said, "You are

not going to put a floor under me for \$11,000 for anything that can't be used for anything but an eagle's eyrie."

It was a big, bald rock about 150 feet high. And, of course, they came in with a potential quarry, which was a very good argument. But it happened to be that property was in a zone which was residential, and I didn't know they could quarry in a residential zone. And I said, "I am going to try this case without any appraiser on the petition. We will take our chances with what the petitioner himself will bring in, having the law on our side."

And that case was tried, and when the expert for the petitioner was asked, "What in your opinion would be the value of this property as a potential quarry if it was in a residential zone," and he said nothing, and that's exactly what the jury came in with.

They took it up to the Supreme Court, and the Supreme Court sustained us. That case is Robinson against the Commonwealth.

So in those instances where I thought we ought to fight the thing, we did, but if I thought we could get hurt—and let me show you an illustration of a case which was not that of a *Commonwealth* case, but the *Massachusetts Turnpike* case, where they had a very good appraiser, a man of 30 years' experience and, in fact, we used him on numerous occasions. But I was always of the frame of mind an appraiser could be in the business for 50 years, but if he did not appraise this particular type of property involved he was like a newborn babe as far as his opinion was worth, because all an expert gives is just an opinion, and not a fact.

The net result was, in spite of his 30 years of experience, the court disqualified him.

That case could have been disposed of for around \$175,000 and the jury came in with \$792,000. The name of that case is the *Leline* case against the Massachusetts Turnpike, and that went up to the Supreme Court.

And I'll give you another one. The Framingham Motel——

Mr. SCHERER. Really, that does not help me.

Mr. ROSENBLATT. I just want to point out to you, Mr. Committeeman, that these appraisers are not any particular gods to me. They are just like Saturday night quarterbacks. They can be wrong, too, you know, like I can be wrong, but I would like to be shown.

Mr. SCHERER. We have come to that conclusion from having heard some testimony. Can you give us an idea of the percentage of cases in which the jury brought in verdicts which were less than the final offer made by the State? That might help us.

Mr. ROSENBLATT. Oh, I would say it would be very minute. I would say if it reached 10 percent it would be a high figure. May I revert back again to what I was bringing out?

Mr. SCHERER. Yes; just one question.

Mr. ROSENBLATT. Go ahead.

Mr. SCHERER. In what percentage of cases did the jury bring in verdicts substantially in excess of what was offered by the State?

Mr. ROSENBLATT. I would say better than—about 90 percent of the cases.

Mr. CRAMER. Ninety percent?

Mr. ROSENBLATT. Yes; I have been reading them, and if you will let me read the rest you will get an idea for yourself.

Mr. CRAMER. How do you account for that? Why?

Mr. ROSENBLATT. Because the outside appraisals made no sense. Here is one in Bristol County, \$575, and the jury gave them \$17,566.

Mr. CRAMER. Yes; apparently they made sense to the jury.

Mr. ROSENBLATT. Who made sense to the jury?

Mr. SCHERER. Outside appraisals; he meant the State's outside appraisals.

Mr. CRAMER. Oh, the State's appraisals made no sense?

Mr. ROSENBLATT. Absolutely.

Mr. CRAMER. And that is what you went to court with.

Mr. ROSENBLATT. Yes. I would take them in a figure. In this case they wanted \$25,000 and I told them that was way off, and in that case I maybe offered them, offhand, \$14,000 to \$15,000, and the jury came in with \$17,566. But, of course, I was sticking my neck out having a \$575 appraisal on it and a \$1,448 appraisal.

Mr. SCHERER. In these cases where the jury rendered a verdict substantially higher than the final offer of the State, the plaintiff's case was substantiated then by outside appraisers?

Mr. ROSENBLATT. They were believed. Let me say it that way.

Mr. SCHERER. The outside appraisers?

Mr. ROSENBLATT. That's right. They were believed.

Mr. SCHERER. The plaintiff's attorney was?

Mr. ROSENBLATT. The petitioner's appraisers were. I wouldn't say they were believed, because after all, I just showed you one of \$332,000. That's what they testified to, but the jury only went up to \$99,000.

Mr. SCHERER. I meant that there was evidence by the petitioner's appraisers to support the verdict of the jury.

Mr. ROSENBLATT. Oh, yes; definitely.

Mr. CRAMER. You said or indicated that one of the problems was these appraisers. You call them outside. You mean outside of the department?

Mr. ROSENBLATT. That's right.

Mr. CRAMER. Fee appraisers working in behalf of the State were not any good. Is that it?

Mr. ROSENBLATT. That's right, and I said so. I was starting then to say to this board of review, I said, "I can't go along with your appraisals here." I said, "You fellows sit here at 100 Nashua Street and don't go out and look at the property, and you don't know any more about the property than the appraiser who makes out his report. If he is some fellow who knows some fellows, and he is doing appraisal work, immediately he becomes an expert. Tell me, gentlemen." I said—and these are all qualified men. I'll say that for them. But if they don't go out and look at the property they couldn't go into court and testify in any sense as to the value of the property, and I put that question to them.

I said, "Gentlemen, can you go into court and qualify as experts to justify these figures that you have me live by under this law?"

Mr. CRAMER. You are talking about the review board?

Mr. ROSENBLATT. That's right. And they said, "No we can't," and that's the truth.

Mr. CRAMER. I was talking now about these fee appraisers. As a matter of fact, didn't you at one time say some of the appraisers in the department of public works are better than others? The greater part of them, meaning in the Massachusetts department, are political appointments?

Mr. ROSENBLATT. The right-of-way fellows. Of course they are. They change according to the administration.

Mr. CRAMER. You indicated you felt the right-of-way administration was made up of better than 90 percent of political hacks. Isn't that what you said?

Mr. ROSENBLATT. Yes. You refer to the bureau of public roads that came down and had a conference with me when Commissioner DiNatale was at the head of it, and they sent a letter to the commissioner and suggested before I recommend a figure to the courts that I go back to the right-of-way department and ask them to review their appraisal. And I said, "Why should I? Who are these fellows supposed to be?" I said, "You have a little over 120 of them," and, I said, "Outside of 8 or 10 of them they are all a bunch of political hacks appointed according to whether it's a Republican or Democratic administration."

Mr. CRAMER. And that's what you had as your weapons when you went into court—these political hacks as appraisers?

Mr. ROSENBLATT. Oh, you can't even use those fellows.

Mr. CRAMER. That's what I'm talking about.

Mr. ROSENBLATT. You can't use the right-of-way fellows. They don't qualify.

Mr. CRAMER. The fee appraisers?

Mr. ROSENBLATT. Yes. Some of them qualify, the fee appraisers, but look. I tried a case in November, Mr. Cramer, just this past November, against the Commonwealth. And they brought in an appraiser from South Deerfield to testify on some property in Lynnfield. That's a distance of 130 miles away. When I got through cross-examining him he was not allowed to give his opinion, because he absolutely knew nothing about the values in that area. He knew nothing about the streets in that area.

Just because a man is an appraiser, like he testified he has been in appraisal since 1931, and by the time I got through cross-examining him I showed he was 21 years old at that time, and when I pointed out, "You were not making appraisals when you were 21," and he said, "Well, I was helping my father," and I said, "Well, your father was not making any appraisals in 1931. There was a foreclosing of properties in those days. That is the height of the depression. In 1932 and 1933 and 1934." And finally he said, "I didn't make any appraisals until I got out of the Army in 1945." And when I started taking him up on that, he didn't make any appraisals for the Commonwealth until he had made this one. In fact, he said he made an appraisal in 1958.

I said, "You mean an appraisal in 1958?" And he said "Yes." I said, "For whom? For the Commonwealth?" He said, "Yes." I said, "Do you know Max Rosenblatt?" He said, "Yes." I said "That's me." And he said, "Yes." I said, "Did you ever make an appraisal for me?" He said, "Well, I didn't make it directly. I collaborated with the man who did make it." So I said, "You answer my question. When was the first time you made an appraisal for the Commonwealth with a letter of authority?" He said, "In this case here." I said, "When is that?" He said, "October of 1959."

So naturally, by the time I got through with him the court was in no other position than to disqualify him. If you protect the pub-

lic funds by having people like that then the attorney general's hands are closed.

Mr. CRAMER. Exactly now, how many instances?

Mr. BLATNIK. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. BLATNIK. Mr. Rosenblatt, you said a minute or two ago that you related your experiences with incompetent appraisals to the Federal Bureau of Roads officials?

Mr. ROSENBLATT. Oh, yes; I said that.

We had a conference. I think it was in November of 1957. That was the first conference that I had with the Bureau of Roads and Mr. Cliff Enfield came down and Judge Phillips, from Tennessee, came down, and I think Mr. Bennett was there, and Mr. DiNatale.

And Mr. Ricciardi, who was then acting as an assistant to Mr. DiNatale—I don't know—in some capacity, he was around there.

And I don't know, three or four others were there. And he said they sent a letter and I have got a copy of the letter right now, but I think you people must have it, because you have the records of the Bureau of Roads—a two-page letter wherein they set forth this practice that I should adhere to.

And these were my answers to the Federal Bureau of Roads representatives, for Mr. Enfield, Mr. Phillips—Judge Phillips—and, of course, I told him, I says, "Now, look, there's nothing that this attorney general's office does that isn't in the strength of daylight."

I said, "We have no control over the courts. There are"—at that time there were 32 judges in the superior court.

"We don't tell the judges what to do. They confine them to what we suggest or they can throw them out."

I says, "And here—here's a sample." I said, "You have been getting samples of our reports." I said, "That's because Mr. Bennett asked me to send you people copies of it."

I says, "And since Mr. Bennett asked me"—and that, by the way, was the early part of 1957 when I happened to be speaking before a chapter of real estate appraisers and told them about what our procedure was, and Mr. Bennett heard about it, my ordering three copies, and he asked me afterwards would I mind sending one of the three copies to the Bureau of Roads.

And this was the system that I put into vogue way back in 1953 before the Federal Bureau even came into being.

And I said I would be glad to, and from that time on, when Mr. Bennett asked me I started sending them reports.

I said to these fellows, I says, "Now, you fellows, unless you can show me that I am crooked or unless you can show me that I am unprepared and uninformed as to the duties of my job," I says, "then you are, in effect, attacking a judicial decree of the superior court."

I says, "And I don't think you have that right to, sir." I says, "We are still a sovereign State."

And the only thing that Judge Phillips said when I got through was—and you could tell that he was a fine southern gentleman, because by his brogue, and he—

Mr. CRAMER. I hope something in addition to that.

Mr. ROSENBLATT. And he said to me, he said, "Well, Mr. Rosenblatt, I can understand why you feel the way you feel. You are jealous of

your State rights and, of course, you can tell that I am from the South and I can appreciate just how you feel, and all we want is to find out what your procedure was."

And, of course, I gave him our procedures. It took me a little over an hour to give him that procedure by citing specific cases, and he—I understand that he sent a letter, a two-page letter, wherein they said that as far as the State of Massachusetts was concerned, and I think two people have a copy of that letter, that Massachusetts would be the exception to the rules and regulations as affecting the Bureau of Roads in the disposition of cases.

MR. BLATNIK. It would be an exception in what way, Mr. Rosenblatt?

MR. ROSENBLATT. As to what we were doing in the attorney general's office, because I would have no idea of how the department of public works, through its right-of-way department, was working, because I wouldn't even know what case would be taken until there would be a petition entered in the court.

MR. BLATNIK. And you told the Federal Bureau in or, rather, you mentioned Mr. Bennett, and that is Arthur T. Bennett?

MR. ROSENBLATT. Yes, this gentleman over here. This fellow sitting in the room.

MR. BLATNIK. Who testified or who testified yesterday? Who became the division right-of-way man?

MR. ROSENBLATT. Yes, they should have sent about five other guys with him though, because it's more than one man can do. I think he does a very good job, but he's only limited.

MR. BLATNIK. Did you talk to Mr. Bennett and Judge Phillips, who was from the Washington office in charge of the whole national right-of-way program?

MR. ROSENBLATT. That's right.

MR. BLATNIK. And did you tell Judge Phillips and his staff people, from the Bureau of Roads, about the awful problem you had with incompetency and the unreliability of the fee appraisals?

MR. ROSENBLATT. That's right, just like I am telling you people right now, only it took me about an hour and 5 minutes to tell it to him at that time, because I went into more detail.

MR. BLATNIK. Did it make any impression on him? Was there any reaction on their part?

MR. ROSENBLATT. Yes, I'm just telling you: The first and only thing that they said, through Judge Phillips, who was counsel for the Bureau of Roads, was, "We are only trying to find out what your practice and procedure is; that's all we want to find out."

"I don't blame you for feeling the way you do, wherein you think your sovereign rights in the State of Massachusetts are being violated here."

Now, see, they had a part in a letter there—if you got that letter—wherein they said they will pay no decree of the State in excess of the board of review.

And I said, "Well, and who do you think the board of review are? Five fellows that are sitting on their backsides, at 100 Nashua Street, and they never go out and look at the property and I'm going to listen to them. I can get my head knocked off.

"Let me give them a reason."

When I said that in our first meeting back in 1955, when the Bureau of Roads wasn't even in the picture, Mr. Connor said to me—when I said, “Why don't you gentlemen write down in your recommendation of your figure what your figure is and how you arrived at it, so I can follow the logic instead of just giving me a bare, naked figure?”

I said, “After all, you don't want to have me impressed that you people are unanimous in every single appraisal that comes before you.”

I said, “Isn't there times or sometimes when there is a division of 4 to 1 or 3 to 2? Isn't there some argument that goes on where you compromise?”

“Can't you give me your reasoning behind your figure?”

Mr. Connor said to me, “Well, under the law we don't have to.” So I said, “Well, under the law I don't have to live with your decision either. I can disclose to the court your figure, the outside appraiser's figure, my figure how I arrived at it, and let the court come as the referee in the case as to what is a fair figure.”

“I am not going to live with your figure unless you give me some logic to it.”

Mr. EDMONDSON. Mr. Chairman—

Mr. BLATNIK. Let me finish and then I will yield.

What obviously happened is that a breakdown of this whole operation and right-of-way appraisals occurred at the point in which the fee appraisers were selected?

Mr. ROSENBLATT. Well, Mr. Chairman, if I can say this: Yes, I would say that followed.

But I would say this: I say there is a step before that, and the step before that, working in the right-of-way department, if they had provided, by proper training, who weren't in any way bedeviled by the fact that they had temporary appointments, men of trained experience that could go in there and make a good field appraisal, then what you heard Mr. Dolben and Mr. Hunneman say, that would have some credence and credibility in the sense that there would be a complete picture of what the field man could show.

Now you can't get it so long as you have the system wherein, if there is a Republican administration, bang, the whole bunch of Republicans, new right-of-way men, come in.

When there is a Democratic administration another sweep of new men come in, and these people are insecure in their position.

And when they do live—and don't forget, in our State they elect every 2 years—and when they do learn, even when they come in and they are new at it, and they do learn, and it takes them a couple of years to get their feet on the ground, then it is time for them to get out because the new administration may be coming in.

And I say that that is the first area of where the wisdom comes in.

Mr. BLATNIK. Yes, that is the first step. Then the next step is how come they were not detected?

Obviously, they were were not detected, that you know of, by whatever commissioner was in charge. For quite a while Commissioner Dole was in charge?

Mr. ROSENBLATT. What was his background?

Mr. BLATNIK. The board of review members, as the witnesses told us this morning, were not able to penetrate behind the veracity and authenticity and reliability of data sheets. They merely accepted them at face value.

Mr. Bennett, who testified yesterday, did not really get on to this until the latter part of 1959.

Mr. ROSENBLATT. That's right.

Mr. BLATNIK. That was about 2½ years after the conversations you had. You have been the first witness, Mr. Rosenblatt, that has come and told us as far back as almost 5 years ago——

Mr. ROSENBLATT. 1955, the latter part of——

Mr. BLATNIK (continuing). That you were incensed with the unreliability of the appraisals, and you told your own State people that.

You told the Federal Bureau people, both on the State divisional level and you told those from the national office. And it puzzles me——

Mr. ROSENBLATT. Well, you know what I would suggest to this committee on this particular board—I think the board has very fine men, as far as their background is concerned, but I feel it is a case of the blind leading the blind, because they, maybe, know how to appraise mathematically a piece of property, but they aren't in any way informed as to court procedure.

And what evidence can go in on value, and who can qualify as an expert, they are not informed on. Now, if that board had four of these men and the fifth man should be a lawyer, trained in eminent domain, to sit with them, and then they would have some guidance and some of these glaring things, of bringing down appraisers who are not qualified, would become evidence just like that.

Mr. EDMONDSON. Mr. Chairman?

Mr. BLATNIK. Here is the ludicrous part of the situation——

Mr. ROSENBLATT. The what?

Mr. BLATNIK. Here is the ludicrous part of this whole operation, that you end up with five obviously, eminently qualified, responsible, and conscientious men, spending time for which the State pays them \$150 a day and——

Mr. ROSENBLATT. \$200.

Mr. BLATNIK (continuing). \$200 a day, in terms of effort, but all they are dealing with is kicking around a bunch of phoney papers and fictitious papers and in some cases falsified, copied papers and making a big whoop about it. It is a ridiculous situation. Yet——

Mr. ROSENBLATT. Well, I——

Mr. BLATNIK. Nothing in the inspection or control system, either on the State level, and certainly not on the Federal level, picked up this phoney operation. They had everybody bamboozled right up the line.

Mr. SCHERER. Well, the Federal Government mentioned it in 1959, Mr. Chairman.

Mr. BLATNIK. Did what?

Mr. SCHERER. The Bureau of Public Roads picked up these.

Mr. BLATNIK. This is May. We are talking about the early part of 1957.

Mr. SCHERER. That is what I am going to ask him.

Mr. BLATNIK. The man tells me—or I will ask you first. What percentage of the appraisals coming to you did you feel were incomplete or undesirable or incompetent? Eighty percent or——

Mr. ROSENBLATT. I wouldn't go that high. I would say around 70 percent. Some of them are very good and I stuck with them. Some of the high ones in dollars and cents sort of lived up to it.

Of course, some of them were ridiculous like this one I told you about, the \$187,000, when I turned around, and I proved to them that they only paid \$125,000 for it 2 years before our taking.

Mr. EDMONDSON. Mr. Chairman?

Mr. ROSENBLATT. But most of the high ones were fairly good. But there was only just a handful of appraisers that could not be swayed one way or the other.

Mr. BLATNIK. I wish we had a few more men like you in both the State and the Federal level at that time, as it would have been straightened out a long time ago before it got into the awful condition that it was allowed to get into.

Mr. ROSENBLATT. Well, I had my ups and downs with them. I had to fight all the way through with this one and that one. It didn't matter who they were.

They had a certain set pattern of doing things, and when I came in I must have been sort of radical in my approach, but I had nobody to fall back on.

All I had was a situation where the courts just wouldn't pay any attention to the attorney general's office. We had to build right from the ground up, and the only way you can do it, and the way I thought it should be done, was right out in the open, like we are saying things here now: right in the open court these things would be said by the petitioner or his appraiser or by his attorney and by myself, and everything would be taken down by the machine, so there is no chance of anything sub rosa or irregular going on.

Mr. SCHERER. Did you say that the courts were not paying any attention——

Mr. EDMONDSON. Mr. Chairman——

Mr. ROSENBLATT. Yes, that's what we inherited, sir. Not to us.

Mr. SCHERER. They had not been paying any attention——

Mr. ROSENBLATT. They paid to us attention, because we came——

Mr. SCHERER. That is right.

Mr. ROSENBLATT. Before that, no, because there——

Mr. SCHERER. Now, when the Bureau of Public Roads came to you in 1957, the purpose of coming to you was to question some of the awards that had been made by the courts and the procedures that were being followed in obtaining these judgments?

Mr. ROSENBLATT. That's right.

Mr. SCHERER. Is that not the purpose?

Mr. ROSENBLATT. That was the purpose.

Mr. SCHERER. Because they were worried about the methods and procedures that were being used to get these judicial decrees?

Mr. ROSENBLATT. That's right.

Mr. SCHERER. And the Bureau of Public Roads was concerned that these awards were too high and they were looking for a way to go behind the court decision?

Mr. ROSENBLATT. That's right. Yes.

Mr. SCHERER. That is what the purpose was?

Mr. ROSENBLATT. That's right, and——

Mr. SCHERER. Because they felt something was wrong?

Mr. ROSENBLATT. That's right, and I don't believe in any bureaucracy telling the court what to do.

Mr. SCHERER. That is right.

Mr. ROSENBLATT. I will give a person a fair dollar. I am not going to let Mr. Jones, because he is here in Washington, tell me what property is in Boston or in Springfield.

Mr. SCHERER. All right.

Mr. EDMONDSON. Mr. Chairman, could we have the microphone turned down a little bit?

Mr. ROSENBLATT. As you know, gentlemen, I started my politics back in 1923, when we didn't have microphones.

Mr. SCHERER. But you said before you became the assistant attorney general that the courts were not paying any attention to the attorney general's office?

Mr. ROSENBLATT. That's right.

Mr. SCHERER. And it was how long after you became attorney general that the Bureau of Public Roads called on you to complain about it?

Mr. ROSENBLATT. 1957.

Mr. SCHERER. Well, how long?

Mr. ROSENBLATT. Four years.

Mr. SCHERER. Four years. But they were interested in the same thing that you were interested in, were they not?

Mr. ROSENBLATT. That's right——

Mr. SCHERER. The bad appraisals that were being made by the officials of the State of——

Mr. ROSENBLATT. They mentioned nothing about appraisals. Nothing.

Mr. SCHERER. Well, you told them?

Mr. ROSENBLATT. They mentioned nothing about appraisals, sir. The only thing they wanted was for me to go back to the very source of where this all started from. If you get the letter there, you read it.

Mr. SCHERER. All right. That is what I wanted to bring out, that they were complaining about the sources of information, the same as you were.

Mr. ROSENBLATT. Yes, but they wanted me to go back to it.

Mr. SCHERER. All right. But they were looking for a way to go back, were they not?

Mr. ROSENBLATT. Yes, sir.

Mr. SCHERER. In order to find out what was wrong with the appraisal?

Mr. ROSENBLATT. I understand what you are saying, but they were sending me down that dirty street all over again. That's the street I had already traveled before I came there——

Mr. SCHERER. Wait a minute. Now, you were trying to explain to them why you could not go back?

Mr. ROSENBLATT. That's what I did.

Mr. SCHERER. And review these bad appraisals?

Mr. ROSENBLATT. That's right.

Mr. SCHERER. They thought they could attack the judgments of the court, did they not?

Mr. ROSENBLATT. Right. Right.

Mr. SCHERER. Because they thought the judgments were bad?

Mr. ROSENBLATT. That's right.

Mr. SCHERER. All right.

Mr. EDMONDSON. Mr. Chairman?

Mr. BLATNIK. Just a minute. Mr. Edmondson.

Mr. EDMONDSON. I just wanted to get something in perspective here.

As I understand it, Mr. Rosenblatt, you were in charge of the eminent domain section for the attorney general's office, and I assumed, in that capacity, you had the responsibility for condemnations of all types, not only for highway purposes but for public buildings?

Mr. ROSENBLATT. That's what I brought out, for every department.

Mr. EDMONDSON. You made a pretty good case here as to how sad and sorry the appraisers were that were responsible for the road right-of-way. Did the same situation prevail on appraisals in other condemnation suits that the State was involved in or were the roads worse off, from the standpoint of the quality of appraisers, than were other land takings?

Mr. ROSENBLATT. Well, I don't recall MDC or natural resources or the department of education or department of health, where they made takings.

They would hire their own appraiser and it would be somebody, sometimes the same, but they were high-grade fellows and I had no trouble on that score, no.

Mr. EDMONDSON. Then the pattern was unique insofar as the road program was concerned because the appraisers in that area were inferior as a group—

Mr. ROSENBLATT. That's right.

Mr. EDMONDSON (continuing). To the appraisers in other land takings by the State?

Mr. ROSENBLATT. That's right. In my opinion, sir, there was mostly politics in the hiring of appraisers, public works-wise, than anywhere else, because they were in an arena where there was the most active, let's put it that way—because on these others there would be fewer takings with, say, the marine commission or conservation division—there would be fewer of those takings. So they didn't have the same call for the same number of appraisers.

While public works really had the influx of all these things and these fellows, who knew how to get in there, and sometimes I wondered how some of them got in there, came in to the picture—some people, I don't know.

I was in there from 1953, and I started seeing some names there somewheres around 1957 or some people I was wondering—1956, yes. Herter was still Governor at that time.

And I didn't know how this fellow all of a sudden developed to be an appraiser, because I thought I knew these people by reputation, even though I may not have known most of them by name.

And I had spoken before a number of their chapters and societies. And then I saw some of these new fellows come in and I just wondered how they grew more appraisers overnight. And that was really what happened.

Mr. EDMONDSON. Well, in these other departments that you mentioned, resources and education and public buildings and so on, didn't the same turnover prevail, when administrations changed with regard to appraisers that prevailed in your road appraisers?

Mr. ROSENBLATT. No, for this reason: None of these other departments have a right-of-way division outside of MDC, and they only have two because they haven't got as many land takings.

What they would do, any of the other agencies or departments of government, when they would be authorized by the legislature to make a taking, they would then get in touch with me and ask me what their procedure would be.

And I tell them, "You hire some sort of an appraiser that you have some confidence in." And that was the only thing that would go on.

There would be no right-of-way men there at all. These—the public works is the only one that has a right-of-way division and MDC, I think, has only two men. They might possibly have three by now. But during the time I was there, they only had two men there.

So it gives you an idea of how small in comparison, 120 public works-wise, and only about two during the time I was there, in MDC.

MR. EDMONDSON. Is there any merit system or civil service at all in the highway department there with regard to engineers or—

MR. ROSENBLATT. Engineers there are but not on the right-of-way.

That's one of the things that I said to your counsel, Mr. May: To begin at the beginning, I would put these people under a civil service, provided they could pass an examination, if they had 3 years' experience in either real estate, building, engineering, or contracting, before they even would qualify for the job. Then you are not just picking any Tom, Dick, and Harry because he knew somebody to get the job.

MR. EDMONDSON. Thank you.

MR. ROSENBLATT. That's exactly what the practice is.

MR. EDMONDSON. Thank you, Mr. Chairman.

MR. CRAMER. Mr. Chairman, on this question of 70 percent incompetent appraisers, I have a question.

Now, what did you do when you got a case with an incompetent appraiser? How did you handle it? As I understood it, you made a recommendation to the State and they did something about it. Did they do anything about it?

MR. ROSENBLATT. But yes, I got nothing to do with the hiring. So I turned around and made my own appraisal. I got out and look at the property and then I am in a position to go into court, tell them what I saw, and what I feel and recommend it.

That's all. I couldn't get another appraiser because you can only get an appraiser who saw the property at the time of a taking, not when it's destroyed or when the area is changed. Those fellows are out. I don't care how good they are.

MR. CRAMER. How did you get your appraisers then?

MR. ROSENBLATT. Well, I just got through telling you. This is only about 198 cases that were tried out of 3,100.

MR. CRAMER. How about cases in settlement?

What did you do if you felt that you did not have adequate appraisals or appraisal information?

MR. ROSENBLATT. I just got through telling you, I would disclose it to the court.

I would read for them the green sheet that the public works would send down to me. This is what the right-of-way department—

MR. CRAMER. Right. Right. That is exactly it. You hit it right on the nose, and that is what I wanted to inquire into. You did not even see the appraisers; did you?

MR. ROSENBLATT. Oh, sure. Let me get through.

MR. CRAMER. You did not even see the appraisals?

MR. ROSENBLATT. Of course I did. You are asking me what I did in the courtroom. Well, I am telling you what I did in the courtroom.

I would read over to the court, after the petitioner or his appraiser got on the stand and testified—I would then say that the attorney general's office would like to disclose to the court the following appraisals, one made by the right-of-way division, one made by an outside appraiser, a second one made by an outside appraiser, and this is a board of review figure as a result of these two outside appraisals.

Now, this is the figure that the attorney general's office is willing to recommend.

If it meets with the court's approval when I disclose how I arrive at this figure—and then I would start in and I would reflect immediately the potential earnings of the property. I would then stabilize the potential earnings by allowing for vacancies or other contingencies.

That would give me a gross stabilized earning of the property. I would then take off the expenses to be charged to the land and the building outside of depreciation.

Then I would take the value of the land and capitalize it and get any tax factor on that. When I got through with that I would then have a net figure of what the—of what the land and the—of what the building itself was worth.

Then I would take the value that that net figure would show, after deducting the expenses, like repairs and insurance and water, and light and management—I would then take that net figure as the net earning of that particular piece of property, and then I would capitalize it, allowing for depreciation of the structure, allowing a fair capitalized figure, either a 6 percent if it was in kind of obsolete fashion, maybe 8 percent, and put my tax factor on that.

And that would give me the earnings—the value of that particular structure which I would then add——

MR. CRAMER. All right. All right.

MR. ROSENBLATT (continuing). Add to the value of the land. This is what I brought out to the court, sir.

MR. CRAMER. You would make a mighty good appraiser. Unfortunately, Massachusetts did not hire some men who have such knowledge as you have.

But this is the point: In arriving at those conclusions, which you presented to the court for settlement purposes, what did you use as the basis for your information? These bad appraisals?

MR. ROSENBLATT. No. That's what I said, I would discard them. I would go——

MR. CRAMER. I am not talking about a case that went to—a contested hearing. I am talking about a settlement case.

MR. ROSENBLATT. That's right. That's right.

MR. CRAMER. Now, what appraisals did you have before you when you reached your conclusion as to value?

MR. ROSENBLATT. I would take the property itself, its potential earnings—let me give you a specific case.

MR. CRAMER. You did not inspect the property?

MR. ROSENBLATT. Of course, I would inspect the property. I would always go through a piece of property whenever I would come up—

if it was especially a big piece of property, and even on small businesses—I remember once with Judge Quirico, when he was sitting out in Pittsfield, and there was some property out around North Adams there, and he got through at 4 o'clock, and about 7 o'clock at night we were out looking—he was going to hear these cases—we were looking at the property which was—he was going to hear it the very next day on the question of my recommendation.

Mr. CRAMER. All right. So what did you do in cases where you were trying to settle them and you presented to the court a settlement proposal, and you testified to the court, in effect, what you thought was the fair value, fair market value?

What did you base that decision on? You had to base it partially, at least, on the appraisals you had in hand. Right? Did you look at those appraisals? Did you consider them? That is those appraisals sent up by the department of public works.

Mr. ROSENBLATT. That's right. I would look at them and if they made sense I would go at them. If they didn't, I would disregard them.

Mr. CRAMER. If you did, did you get another appraisal to support your position?

Mr. ROSENBLATT. No. No.

Mr. CRAMER. Why didn't you? That is the point I am making. Why did you not get an additional appraisal and present it to the court and say, "Here is my evidence"?

Mr. ROSENBLATT. Yes; that's what the bureau of public roads said, and you can always get another appraisal to justify your figure if you want to do that.

Mr. CRAMER. Now, just a minute. Just a minute. I am taking it on the assumption that the appraisals you got were some of the 70 percent bad ones. What did you do in those cases?

Mr. ROSENBLATT. I'm just telling you. I would make my own, appraise my own, use my own judgment, and I can do it as good as any appraiser.

I can turn around and figure out—supposing I had an office building, so much a square foot for each office, how many feet I had there. I would develop a potential earning power. That is what I would do.

I wouldn't go by what they say. For instance, let me show you, I had a—

Mr. CRAMER. Well, I thought these cases—the court in determining the value, listened to the evidence which you presented involving value even in settlement cases?

Mr. ROSENBLATT. That's right.

Mr. CRAMER. And in order to do that, it seems to me it would have to have available for its inspection these appraisals?

Mr. ROSENBLATT. No; no.

Mr. CRAMER. Why not? What evidence is presented to the court otherwise?

Mr. ROSENBLATT. They would have the figure of that appraisal; yes.

Mr. CRAMER. Just the figure.

Mr. ROSENBLATT. That's all.

Mr. CRAMER. That is the point I am making now. The court did not have an opportunity to examine the appraisal to determine, in the court's mind, whether or not a proper appraisal was made and, therefore, whether the settlement figure was correct. Now, is that not true? The court did not see the appraisal?

Mr. ROSENBLATT. Well, if you want to twist it that way, that's all right. That's all right with me.

Mr. CRAMER. I'm not twisting it. I am asking you.

Mr. ROSENBLATT. Well, what are you trying to raise by saying that the court did not have it? I had it and I was a court officer.

Mr. CRAMER. All right. But you are an officer on behalf of the State, too.

Mr. ROSENBLATT. That's right.

Mr. CRAMER. And the court—

Mr. ROSENBLATT. And it was public money I was dealing with, and if I thought I could get the case at the fair dollar that was there, I would buy it at that dollar.

Mr. CRAMER. I am not criticizing you. I am just trying to find out what the procedure was. Now, the appraisals themselves—the appraisals themselves, were not introduced in the court records in settlement cases, and the court or judge, therefore, having no opportunity to look at the appraisals, did not know whether they were good or bad. Is that not true?

Mr. ROSENBLATT. Let me say this—

Mr. CRAMER. Is that not true?

Mr. ROSENBLATT. They were available and—

Mr. CRAMER. I am not—

Mr. ROSENBLATT. Let me answer. You asked me a question, I want to answer it. The appraisals were in open court, and I would show it to the judge, and all he would be interested in is what is the figure there. That's all.

I never hid any appraisal. There's one or two, and its being done today, the same way. The appraisals are available for the court on examination.

Mr. CRAMER. Now, I am not criticizing you. What I am saying is the court didn't ask to see the appraisals. Right?

Mr. ROSENBLATT. No, they didn't.

Mr. CRAMER. All right. So how does the court know what the value is if—

Mr. ROSENBLATT. Because maybe I made some sense to them, just like you just said, I should go out and make appraisals for the State, but I am a lawyer, I am not an appraiser.

Mr. CRAMER. That is the point. The court is supposed to make its decisions based upon qualified evidence—

Mr. ROSENBLATT. That's right.

Mr. CRAMER. And none was presented. Your evidence was presented.

Mr. ROSENBLATT. That's right.

Mr. WRIGHT. Mr. Chairman?

Mr. BLATNIK. We are going to have to leave. There is a quorum call.

Mr. WRIGHT. Just briefly, I want to recapitulate one or two matters. You were assistant attorney general for how many years?

Mr. ROSENBLATT. Six years.

Mr. WRIGHT. Six years. Who was your successor as assistant attorney general?

Mr. ROSENBLATT. Joe Lyons.

Mr. WRIGHT. What do you think of the job he is doing?

Mr. ROSENBLATT. I think he is doing an excellent job.

Mr. WRIGHT. You have said that there is more politics in the department of public works in the hiring of appraisers than in any other activity in the State?

Mr. ROSENBLATT. Yes, that's my candid opinion.

Mr. WRIGHT. You stated, as a starting point, in reforming this corrupt situation, by suggesting a merit system or a State civil service system of trained, career appraisers——

Mr. ROSENBLATT. Right.

Mr. WRIGHT (continuing). To replace this political spoils system which you described.

Mr. ROSENBLATT. That's right.

Mr. WRIGHT. I think it is an excellent suggestion and it might help solve some of our problems.

Mr. ROSENBLATT. I would like to say this before you adjourn: I would even put a further safeguard on the point that you raise, Congressman.

We are governed in this Commonwealth by our system of a trial by jury. It is my candid opinion, after going—and I have been practicing about 33 years—I believe in the jury system when it comes to human experience.

But we have a situation where under our Constitution a person cannot be denied a trial by jury. Now, you have an eminent domain, a situation where a court, no matter how dedicated, and our judges in the superior court are dedicated men—it's not elected positions. They are there for life. And they are all very fine, high-grade men.

Our juries, I would like to believe, are also dedicated public servants, but they come in and they sit for 4 weeks or 5 weeks, and they are supposed to gather inside of 2 or 3 weeks, that knowledge of the value of property which would take an expert years and years to develop in his own mind.

As you heard here, a man that has been practicing for years, this morning, he says the most you can give is just an opinion.

Now, we throw that particular burden and onus on to these jurors who have never heard the words "eminent domain" until they have just been impaneled.

Now, what I suggest is that there ought to be the right given to the attorney general to hire his own appraisers, also together with the department of public works——

Mr. CRAMER. Precisely.

Mr. ROSENBLATT. That is, because he, in the last analysis, has to use the tools in the court. I would also suggest——

Mr. CRAMER. And you do not have that power now. Is that right?

Mr. ROSENBLATT. No. No.

Mr. CRAMER. That is precisely the point I was raising. You do not have the power to hire your own appraisers.

Mr. ROSENBLATT. But you still have to go a step further.

I would still say that where Federal moneys are involved that the attorney general should set up—where Federal money is involved or even State money for that matter, a division of eminent domain, wherein there will be two career men in there, so that when there is a change from Democrats to Republicans and an influx of new lawyers come in, that there will be at least the continuity of experience and a uniformity of approach.

Now, can I just say this one thing? There should be an eminent domain commission of three men, two appraisers and one lawyer, who have the cases remanded to them from the superior court to these people because they will be sitting day in and day out on the property and they will know what the established values are on any given street in any given area.

Mr. BLATNIK. Mr. Rosenblatt—

Mr. ROSENBLATT. Now, if you can do that, then it isn't hit and miss, the way we have it today with our jury system.

Mr. BLATNIK. Mr. Rosenblatt, we will be recessed for 15 minutes to answer a rollcall. You will be available to continue your testimony.

Mr. ROSENBLATT. All right.

(At this point a short recess was taken.)

Mr. BLATNIK. The Special Highway Subcommittee will please come to order and resume its public hearing.

We will resume with our witness, Mr. Max Rosenblatt.

Mr. MAY. Mr. Rosenblatt, you have testified that, in your opinion, some 70 percent of the outside appraisers were not competent. You were in office for some 6 years. Did you complain to anybody about the incompetency of the field appraisers?

Mr. ROSENBLATT. Well, when you say "complain" I brought out why I couldn't go along with the board of review figures. But I had no authority to do any hiring of outside appraisers. To that extent, I did complain.

Mr. MAY. Did you ever attempt to obtain authority from the various commissioners who held office?

Mr. ROSENBLATT. Well, I told my superior, Mr. Fingold, to take it up with Mr. Volpe when he was commissioner, and nothing came of it.

Yes; I did tell him that I think the attorney general's office, since he is the official charged with the trying of these cases, should have some say about who is going to be used as a witness. And nothing came of it in the entire time that I was in there.

Mr. MAY. Never successful in altering the approach? The fee appraisers—

Mr. ROSENBLATT. No.

Mr. MAY (continuing). Were still hired by—

Mr. ROSENBLATT. Public works; that's right.

Mr. CRAMER. May I ask a question to clarify the record at that point?

Mr. BLATNIK. Yes, Mr. Cramer.

Mr. CRAMER. Did I understand you to say that you, as assistant attorney general, meaning the attorney general as well, has no authority to hire outside appraisers in a condemnation case?

Mr. ROSENBLATT. Well, you mean legally?

Mr. CRAMER. Yes; I would not want you to do it illegally.

Mr. ROSENBLATT. Well, I don't know if you are a lawyer or not.

Mr. CRAMER. Well, if you cannot detect it yet—

Mr. ROSENBLATT. Well, I don't know; there's a lot of smart people who aren't lawyers.

Let me say this to you, Congressman: By the time the case would get to the attorney general's office, in many instances—don't forget, they have a right for 1 year to bring a petition a year from the date of the entry—

Mr. MAY. The landowner.

Mr. ROSENBLATT. That's right. And by that time you would be floating around with whether or not the area would be the same a year after the taking as it was at the time of the taking.

And if you get an appraiser who isn't informed as to the condition of the property and the neighborhood as of the time of the taking, then his opinion isn't worth anything. So, therefore, we wouldn't be in a position to be hiring. The hiring would have to be done from public works, because they would be the first ones on the scene.

Mr. CRAMER. Well now, I would like to reserve a right, after this witness finishes, Mr. Chairman, or at some future time to ask Mr. Beasley to come in on that, because, quite obviously, a number of his appraisals had to be at a later date, and I understand that he found no difficulty in coming up with reasonable valuation figures. But that is not the point. The point is legally you do have the power to hire appraisers?

Mr. ROSENBLATT. If you put it that way; yes. If I was caught in a case where, say, my appraiser died and I could find an appraiser who knew that property, as of the time of the taking, and I could qualify him, even though he made the appraisal a year or two after the taking, I would use him rather than go in with no appraiser.

Mr. CRAMER. How about the case when you don't have him bid, but they have traveled this dirty street you are talking about, had appraisers, some of these 70 percent appraisers? What would you do then?

Mr. ROSENBLATT. What would I do?

Mr. CRAMER. Yes.

Mr. ROSENBLATT. I would use them, I suppose, because that's the only ones I would have unless they took my figure.

Mr. CRAMER. Then you would not flirt around with, maybe, trying to get a good appraiser?

Mr. ROSENBLATT. No, because if the public works doesn't want to pay for it, that's the end of it. We couldn't pay for them.

Mr. CRAMER. Well now, just a minute. We are getting off on another tangent. You had power to pay for an appraiser when the condemnation case came up. Right? When a petitioner filed for value of the property in the court—

Mr. ROSENBLATT. I would have the power if I called up public works. I would always call up public works and ask them if they would pay the bill.

Mr. CRAMER. In other words, your only authority to hire had to be ratified by the department of public works and the bill paid by them?

Mr. ROSENBLATT. That's right.

Mr. CRAMER. Could you name the appraiser or did they send another of these 70 percent bad ones over to you?

Mr. ROSENBLATT. Yes, if it was some special type of property, and I would look around, and I knew certain people that were, maybe, specialists in that line, I would say, for instance, "You ought to get somebody who is a sand or a quarry man." That field was limited.

I wouldn't know their names, but I would direct their attention to where I think they ought to go, looking for that particular type of expert.

Mr. CRAMER. Did you hire outside appraisers?

Mr. ROSENBLATT. No.

Mr. CRAMER. Well, I mean, that is when you had the power and you did not do it. Right? You did not hire outside appraisers. Would not that be one of the remedies? If you got 70 percent bad appraisers why did you not hire good ones? That is, if you had legally, the power to do it?

Mr. ROSENBLATT. What do I need them for? If I can turn around and only try 198 cases out of 3,100—

Mr. CRAMER. No, no, not on the cases to final judgment by jury trial, but settlement cases before the court. Do you not need a good appraiser there?

Mr. ROSENBLATT. Yes; or else I would use my own judgment.

Mr. CRAMER. When you needed them, but you did not hire them then?

Mr. ROSENBLATT. That's right. I thought my judgment was as good as the next fellow's.

Mr. CRAMER. What did the court think about it? They are looking for credible evidence.

Mr. ROSENBLATT. They thought my judgment was better than the average one, too. I can tell you some of the things that a judge says, like there was once one certain appraiser. And he said, "You are nothing but a glassblower; you are nothing but a glassblower."

Well, I am not going to put people on the stand that the judge is looking at him with half an eye, as if "I know that you are going to testify to, a lot of wind here."

Mr. CRAMER. All right. Isn't that true that in nearly every instance your appraisal that was submitted to the courts for settlement exceeded the department of public works appraisal?

Mr. ROSENBLATT. I would say most of them did; yes.

Mr. CRAMER. So most of the time the figure you presented to the court for settlement exceeded the appraisals you had from the department. Right?

Mr. ROSENBLATT. Right. Sometimes, no, but most times, yes.

Mr. CRAMER. All right. Now, is it not true also that when you had this conference on February—around February of 1962. and I have in my hand a memorandum—

Mr. ROSENBLATT. February of 1962?

Mr. CRAMER. Excuse me. Of 1957. November of 1957.

Mr. ROSENBLATT. November; yes. All right.

Mr. CRAMER. I have a memorandum of that meeting, that the discussion that took place at least partially was on the question of whether the Bureau should keep the court's determination of value.

Mr. ROSENBLATT. Right.

Mr. CRAMER. Was that not the issue?

Mr. ROSENBLATT. Right.

Mr. CRAMER. The Bureau came back with the decision they should accept it; did they not? And that was your position?

Mr. ROSENBLATT. Yes.

Mr. CRAMER. Right. And the attorney general, Vincent J. Celia, was assistant attorney general at that time; was he not?

Mr. ROSENBLATT. He was under me.

Mr. CRAMER. Right. And then, I assume, you are familiar with the opinion that was rendered at that time?

Mr. ROSENBLATT. With the what?

Mr. CRAMER. With the opinion by your office to the Bureau.

Mr. ROSENBLATT. I imagine. It depends on what opinion you are talking about. Let me hear it.

Mr. CRAMER. All right. This is quoting from that opinion from Mr. Celia, assistant attorney general, dated December 6, 1957:

The practicing procedure employed by the courts in handling this class of case is as follows:

The case is brought forward and tried by superior court justice without a jury. The nature of the case is outlined to the court. The court is then informed in detail, as to the taking details, including date, purpose, extent, and effective date of taking as to the petitioner's property.

The witnesses are then sworn and the petitioner then proceeds to present his valuation and damage claim.

Usually the owner's statement of valuation and damage is supplemented by the sworn testimony of the owner's expert appraiser.

Exhibits (photographs) are marked. The Commonwealth then informs the court of all appraisals made in the particular case. The name, residence, and valuation of the Commonwealth's appraisers are stated, and the appraisal is available to the scrutiny of the court.

The real estate review board recommendation is stated to the court. All available evidence is presented.

This was the opinion of your assistant, Mr. Celia?

Mr. ROSENBLATT. That's right.

Mr. CRAMER. Based upon which they made their decision that, yes, this is a "court determination"?

Mr. ROSENBLATT. Right.

Mr. CRAMER. And, therefore, under the Federal law, when the Bureau is able to pay the Federal funds to match those in those judgment cases or settlement cases?

Mr. ROSENBLATT. Right.

Mr. CRAMER. All right. The point is that your office represented to the Bureau in this memorandum, and at this conference, that "all available evidence is presented" and the facts, as you testified to them just now, is that they did not even see the appraisals. What evidence was presented except your opinion of the value? How could the court make a determination of value, based upon solely your opinion rather than the opinion of the appraisers?

Mr. ROSENBLATT. The appraisers' figure went into the evidence before the figure of the attorney general was presented—what that expert felt that the property was worth or damaged.

Mr. CRAMER. Yes, and the attorney general's figure invariably was higher than the department of public works, and you testified just a few minutes ago that the judge did not even, in many instances, ask to see the appraisals. Now how can that be a "court determination"? How can that be?

Mr. ROSENBLATT. What do you mean "how could it be"?

Mr. CRAMER. Yes, exactly what I said. How could it be a proper court determination if the judge does not even see the appraisals in an effort to make a decision?

Mr. ROSENBLATT. Because the court was willing to rely that we were quoting the final figure and that's what they were interested in.

Mr. CRAMER. If it is going to be a judicial determination does not the court have to look at the evidence to see how these figures were arrived at? Can you look at the end figure and say that is what the property is worth?

Mr. ROSENBLATT. Yes, you could. Why not?

Mr. CRAMER. How? You could not do it.

Mr. ROSENBLATT. Well, wait a second. I will tell you. In eminent domain the only thing that is involved is your filing of damages, period.

Mr. CRAMER. The fair market value is the figure the court is interested in, but he has to have evidence to substantiate his opinion as to what that value is, does he not?

Mr. ROSENBLATT. That's right.

Mr. CRAMER. What evidence did he have except your opinion?

Mr. ROSENBLATT. Oh, no, many time we would read right from the appraiser's report what he used as an approach, either comparable sales or on a reproduction. We would read that part which was pertinent to justify that particular opinion.

If he didn't think it was important we wouldn't read it, because, as most of these appraisals, you will find many of your appraisals one paragraph long, one page long. What information can you get out of that?

Mr. CRAMER. That's right. You had bad appraisers. Right?

Mr. ROSENBLATT. Well, if you have got it, why aren't you going to use them?

Mr. CRAMER. All right. If you are not going to use it, you should hire outside appraisers to come up with some good appraisals.

Mr. ROSENBLATT. I agree with you, and that is what I asked them to do. I am not arguing with you. If they had done this, all this thing wouldn't have come about. If you had men who are trying to reach a fair dollar—I couldn't understand how in—in one case I remember, I had an appraiser wherein the Commonwealth had a figure of \$9,200, and this was a sand pit.

The other came in and testified at \$225,000. His appraiser came in and he said his appraisal—this is the petitioner's appraisal—was \$159,000. I looked it over and I had a figure of \$9,200, and I turned around—let me see: I may have that case here.

Mr. CRAMER. Well, were any—

Mr. ROSENBLATT. Well, wait a minute. This is very interesting. He came in with \$159,000 appraisal, and his lawyer came down and says, "Well, what can you do for me?" I said, "I will give you \$12,500 for the case." That is a long cry from his \$159,000. So he says, "Oh, you are way off." I said, "Well, maybe I am. I have made mistakes before. That is why I got an eraser at the end of my pencil." I says, "You show me where I am wrong and I will go along with you." He could not. I said, "Go to trial." He went to trial. The jury came in with \$14,770.

MR. CRAMER. Good. You rendered a fine service.

MR. ROSENBLATT. No it is not a question of fine—I am just bringing this out. There is an appraiser, a good appraiser. If he mentions his name—he does good work, but somehow their judgment is colored by who hires them.

MR. CRAMER. Yes, and that is the point. As assistant attorney general, you felt that it was your responsibility to evaluate these appraisals and if you thought they were bad, to say so.

MR. ROSENBLATT. That is right.

MR. CRAMER. And to try to present other evidence to the court.

MR. ROSENBLATT. That is right.

MR. CRAMER. But you just did not hire outside appraisers to help you do that job?

MR. ROSENBLATT. No, I did not hire them. I did not think I needed them. If I thought I needed them I would have used them as a crutch. I do not think I need a crutch. I think I am healthy enough to stand on my own two feet.

MR. CRAMER. And then you get to this point which, to me, I find difficulty in following. If the court makes a determination of value it has to have competent evidence before it can do so, and the only evidence that you, yourself, indicated you had in many cases was your own statement of value, and the court did not even bother to look at the appraisal in many instances. Now did you make recommendations to the then attorney general as to what should be done about this situation?

MR. ROSENBLATT. Well, I will say—I am saying that the court, in many, many of the instances, would look through the appraisal, page by page, like this, study it.

I do not mind. I do not know how smart they are or how much attention they are paying to what they are looking at, but I know these appraisers, in many of the instances, made very little impression on them, because the general feeling is that you can get a man to go out there and get you the appraisal you want, and that is the thing that is weak and wrong in this whole system.

MR. CRAMER. And whom did you complain to within the department of public works about the 70 percent bad appraisals?

MR. ROSENBLATT. I—the Bureau of Roads had me up there in 1955, and I complained at that time when Volpe was in there. I complained to Mr. Swantor or Swanson—I do not know what his name is—

MR. MAY. Swanson.

MR. ROSENBLATT. Swanson. He came down and he started trying to tell me how to run my department, too. And I told him, "Look, you must be a pretty smart engineer and if you listen to me how to build a road, you would be a damn fool." And I said, "If I listen to you how to settle a land damage case, I would be a bigger fool than you are."

And when I got through he says, "This is over my head. I will have to tell Washington." And that's when I got the entire crew down, Mr. Enfield, et cetera, came down, and I told them the same story. They didn't know about it.

MR. CRAMER. Who else did you complain to?

MR. ROSENBLATT. Well, who else do I have to tell?

Mr. CRAMER. Who else did you complain to in the department besides—

Mr. ROSENBLATT. Who else do I have to tell? There's nobody else to go to.

Mr. CRAMER. You went to the people you thought were in authority and complained.

Mr. ROSENBLATT. They could have changed it overnight. Yes, those people could have changed it.

Mr. BLATNIK. All right. Mr. May.

Mr. MAY. Since we are talking about that particular meeting, November 6, 1957, it was your practice, Mr. Rosenblatt, to furnish transcripts to the Bureau of Public Roads on each of these proceedings, was it not?

Mr. ROSENBLATT. It was after Mr. Bennett asked me to do it.

Mr. MAY. Yes. Now you submitted those transcripts. Did anybody from the Bureau of Public Roads ever complain thereafter that you were doing it improperly?

Mr. ROSENBLATT. No, sir.

Mr. MAY. Also at that meeting I would like to read the names of the individuals who were in attendance.

November 6, 1957: Commissioner Anthony DiNatale; Associate Commissioner Fred B. Dole; Chief Engineer Edward J. McCarthy, for the State; Patrick F. Cox, deputy chief engineer; Francis J. Magee, assistant chief engineer; Lester J. Ellis, right-of-way engineer; Max Rosenblatt, assistant attorney general; W. L. Patton, Bureau of Public Roads; Mr. Libby, Bureau of Public Roads; Clifton Enfield, General Counsel, Bureau of Public Roads; Mr. Hall, division engineer, Bureau of Public Roads; Mr. Bennett, Bureau of Public Roads; Judge C. W. Phillips, attorney, Bureau of Public Roads; and Angelo Fiumara, from the attorney general's office. Quite a crowd of people.

Mr. ROSENBLATT. Yes.

Mr. MAY. At that meeting, Mr. Rosenblatt, did you tell everybody present about the deficiencies in the program, about the foundation being inadequate, the appraisals being improper, the fee appraisers being incompetent, and the people within the right-of-way department being incompetent? What did you tell these people?

Mr. ROSENBLATT. Well, it took me 1 hour and 5 minutes by the clock to tell them, without stopping, as to what was wrong. In fact, Commissioner DiNatale said, "Can't you shorten this?"

I said, "I will shorten it when I get through."

Now I went over every single instance of what I found was wrong, and I showed them why I thought my approach was correct. Now I went in and told them the here and wherewithall. I told them, "You tell me to go back to the right-of-way department before I recommend any figures to the court and I say to you, sir, I think that is the most assinine and childish thing to recommend to an adult. You want me to go back to this department that started this mess and tell them that they are wrong and Rosenblatt is right. They will tell be to go jump in the river."

I says, "Do you want me to go back to the board of review and those five men there, and they are capable men, and they will say, 'Well, who do you think Rosenblatt is.' They have got to change their opinion because I say so? They will tell me to go where I am supposed to go."

So I said, "That is not the solution to the situation. I have tried to get proper appraisals in my own mind to work these things out, because these appraisals make no sense to me, gentlemen."

I says, "When I think it is right and when the other side jumps up and renegotiates the case, if it doesn't make sense as to what I am trying to bring out they will show me why it doesn't make sense. I will revise my figures. There is nothing hard and fast about an appraisal figure. If I am wrong, I will say so. If I am right I will stick by it. If we have to go to trial, we will go to trial."

And I went along that particular line.

Mr. SCHWENGEL. Mr. Chairman, I would like to ask the gentleman this question.

Mr. BLATNIK. Mr. Schwengel.

Mr. SCHWENGEL. You named the people who were there at that conference when you spoke for an hour and a half—

Mr. ROSENBLATT. An hour and 5 minutes. Yes, I named them.

Mr. SCHWENGEL. Now I would like to know if there was a record made of that report by you or by anybody in that group.

Mr. ROSENBLATT. You can ask Public Works Commissioner DiNatale. I don't know. I didn't make any record of it. Even Mr. Enfield was there, and I understand he was there and let him give you the—

Mr. SCHWENGEL. Do we have the minutes of that meeting?

Mr. MAY. Yes.

Mr. SCHWENGEL. I think they ought to be made a part of the record. This is important testimony and important evidence here.

Mr. CRAMER. If the gentleman will yield, the memorandum I was quoting from or the quote that I used was from those minutes earlier, from a memorandum of the meeting, where Mr. Rosenblatt was quoted as saying 90 percent of them were political hacks, and that is why that came in or where that come from.

Mr. ROSENBLATT. I am thinking back. I, myself, didn't keep any record, but I think if you read that it is almost as close to what actually took place as the human mind can recall.

Mr. SCHWENGEL. I would like to have that in the record, because I think we ought to call some of these people who were there.

Mr. BLATNIK. Here, you have the whole kit and caboodle of the men in authority and responsibility in this conference, and you laid it out in detail, both before the State and the Federal officers responsible for that particular area, and they could have made decisions and determinations to have corrected that and avoided all of the difficulties that you were constantly finding yourself in because of these inadequate and these faulty and unreliable appraisals. Is that not true?

Mr. ROSENBLATT. That is right.

Mr. BLATNIK. Well, that is what puzzles the chairman. You are talking about a loophole. It is not a loophole. It is like a subterranean stream in this area.

These operators were allowed to ebb and flow, and flow back and forth, and crisscross and cross lines, between representing the State and representing the private property owners, dealing with private attorneys, and private fee appraisers, and getting reports or figures from State-hired appraisals.

And on the surface you find out that the review board, all they have is the sheets of papers and they have no idea as to the validity or the invalidity and, with great conscientiousness, these men are dealing with these figures that mean absolutely nothing.

Mr. ROSENBLATT. Well, that's what it really added up to.

I think that the review board tried to do as good a job as they could under the circumstances, but the chances are, if I were sitting on that board somebody's head would fall, for the simple reason that I just wouldn't be a "yes" man. I wouldn't take the way of least resistance. If an appraisal didn't make any sense to me I would say so.

I remember one particular appraisal that came in to me and had a figure of \$10,000, and I looked it over and this was the right-of-way that was abandoned by the Old Colony and that land only had a certain value, and the appraisal that came in was \$10,000.

And I called in the lawyer on the other side, and I don't know, he must have heard about the \$10,000, and I looked it over and I figured it out by the area that was taken that \$5,000 would be an adequate amount.

So he says, "Well, will you offer it?" I said, "No, I can't offer it because." I said, "I have got this appraisal which is above that, and I think it is crazy. So I won't do anything."

I called up Mr. Dodge. I said, "Now, look, you get me a proper appraisal on this. This is ridiculous."

And he turned around and he says, "All right." And he says, "I will take care of it."

About 2 days later he calls me up and he says, "Would you mind if we had this fellow who did the appraisal review his own appraisal?"

I said, "Look, I am not going to tell you who to hire to correct what I think is wrong. I want a good appraisal that will make sense to me."

So this same appraiser who had \$10,000 reviewed the appraisal and came back at \$5,000. That is what the case was disposed at.

Mr. SCHWENGEL. Mr. Chairman, I asked for permission to put this—

Mr. BLATNIK. Yes, we will get to it.

Mr. MAY. We have it right here, Mr. Congressman. I want the record to be very clear, Mr. Rosenblatt, that at this meeting you put all the people in attendance on notice that you were not getting, and they were not getting, sound appraisal reports. This program cannot exist based on anything but sound appraisal reports. Is that right?

Mr. ROSENBLATT. That's right.

Mr. MAY. And in November of 1957, the State people, the Bureau of Public Roads, and everybody was put on notice by you, who should know, that the appraisal reports were not adequate?

Mr. ROSENBLATT. Yes. I had quite an array against me.

Mr. MAY. Yes, sir.

Mr. ROSENBLATT. Quite a football team.

Mr. BLATNIK. Why? Wouldn't they believe you?

Mr. ROSENBLATT. Oh, no; I mean on the other side of the table. I was on this side of the table, and they were all around me, and they were letting me do all the talking and they were throwing the questions at me. And I felt like somebody in the spotlight.

Mr. MAY. Who did all the talking?

Mr. ROSENBLATT. I did all the talking.

Mr. MAY. I would like to make the memorandums, relating to that particular meeting and the letters that flowed between the Bureau and the State, exhibit 31, Mr. Chairman.

Mr. BLATNIK. Without objection, it is so ordered.

(The document referred to were marked "Exhibit No. 31" and will be found in the committee files.)

Mr. MAY. Now, Mr. Rosenblatt—

Mr. SCHWENGEL. Mr. Chairman, I would like to ask this gentleman one more question.

Mr. BLATNIK. Mr. Schwengel.

Mr. SCHWENGEL. Was there anybody at this meeting that seemed to be impressed or moved to act on the approved mistakes.

Mr. ROSENBLATT. Yes.

Mr. SCHWENGEL. To do anything or give you any assurance that something was going to be done?

Mr. ROSENBLATT. No, I think Mr. Enfield was impressed. He thought that we were trying to do a real good job, an honest one, an aboveboard job, and I think that Judge Phillips, in his expression, felt the same way because, as I say, in his opening remarks, "We are not trying to criticize you; we are trying to find out what your procedure is here."

"And I can understand why you feel sort of disturbed where your sovereign rights are being challenged here."

So I think, on the overall, from what Mr. Enfield said, not directly but by inference, that he thought we were trying to do an honest-to-goodness job from our end of it, and that's all.

Mr. SCHWENGEL. This is 1957 and Mr. DiNatale was there?

Mr. ROSENBLATT. Yes. Oh, yes. He just came in, I think.

Mr. SCHWENGEL. And he came before this committee and expressed great surprise that he saw this announcement in the paper about what was going on.

Mr. ROSENBLATT. Well, in 1957 I imagine he would be surprised. He was only a new commission. I forget when he got in. I think he got in in 1957.

Mr. SCHWENGEL. No, I said—

Mr. ROSENBLATT. Didn't he get in in 1957? I can't recall.

Mr. MAY. I think it was just a matter of days.

Mr. ROSENBLATT. Because he was a new man at the time.

Because the first conference was held when Mr. Swanson was there, but Mr. Sheridan—not the personnel man—

Mr. MAY. That is right.

Mr. ROSENBLATT. Commissioner Carl Sheridan, he was at that time commissioner of public works, as chairman of the commission, and that is when the first conference was had—so he must have been in only a very short time. So he said he was surprised. He must have been surprised.

Mr. SCHWENGEL. It took him a long time to wake up and react to his surprise.

Mr. ROSENBLATT. What?

Mr. SCHWENGEL. It took him a long time to wake up to his surprise.

Mr. BLATNIK. I do not think we should be passing judgments.

Mr. May, proceed.

Mr. SCHWENGEL. Mr. Chairman, I heard you make a passing judgment a few minutes ago.

Mr. BLATNIK. On this particular point.

Mr. MAY. Mr. DiNatale did become commissioner on September 13, 1957, prior to this meeting.

Mr. Rosenblatt, after November 1957, did anyone make positive that the fee appraisal reports and departmental appraisal reports would improve drastically? Did any great change take place thereafter?

Mr. ROSENBLATT. I wouldn't—I wouldn't know. No, I wouldn't know. I wouldn't say yes and I wouldn't say no. I wouldn't know.

I didn't pay any particular attention after that, because I only had to straighten out that part that they charged against the attorney general's office.

And there were about the same appraisals at that time as there was before. And I wasn't impressed, up to the time that I went out, that the system was a correct system.

Mr. MAY. You mentioned that appraisers would set forth their qualifications and you gave us, as an example, that one was in the wholesale meat business.

Mr. ROSENBLATT. Yes. I had one appraiser, in his certificate of qualifications, who said that he was in the wholesale meat business, and a member of the Sons of Italy.

And I said, "So what? Good luck to you, Brother." That was right in the certificate.

Mr. MAY. We have already heard some testimony, Mr. Rosenblatt, concerning the person, William Jacobs. Did you come across some of his appraisal reports?

Mr. ROSENBLATT. Yes, the one I just told you was his. It was \$10,000—where it was \$10,000, and then he reviewed it and it became \$5,000.

Mr. SCHWENGEL. His name was Jacobs, and he belonged to the Sons of Italy?

Mr. ROSENBLATT. No. Oh, no, no. He would belong maybe to something else.

Mr. MAY. Mr. Rosenblatt, did you complain to anybody about the retention of Mr. Jacobs?

Mr. ROSENBLATT. Yes, I did. I did. I complained right to my boss, and, of course, he is gone now. He is dead, and I said this: "I don't go along with this fellow, and I am kind of leery of the way he makes his appraisals, and I would like to have something done about him."

And he told me, he said, "Look, you are not hiring him. If you don't like his appraisals you won't use him in court: that's all."

He says, "That isn't your responsibility. It is up to public works." And, of course, technically he was right.

Mr. MAY. Now, Mr. Rosenblatt, there were times, of course, when you did receive proper appraisals, good appraisals?

Mr. ROSENBLATT. Of course, there was.

Mr. MAY. And those cases, you would stand with those appraisals?

Mr. ROSENBLATT. That's right.

Mr. MAY. You would attempt to settle a case at that reasonable figure or you would try?

Mr. ROSENBLATT. That's right. That's right. I wouldn't care whether it was a case that ran into \$500 or \$500,000.

If I thought the figure was sound, the same approach was used on it. And, in fact,—of course, this isn't public works, but I had situations which involved even a fellow who tried a case, who is a very, very good trial man.

He is right now a prosecutor for the Federal Government, and he came in and he wanted \$22,000 on this particular case and this is on Back Street. I don't know if you people know it. It's a long the Charles River.

And all I was giving was nuisance value, according to the lineal feet that was taken, because we had only taken a 2-foot strip out of an easement there.

So, instead of the wall being 2 feet wide, it became 4 feet wide and I didn't see any harm. But I would give \$75 up to about \$200—would be my top, depending on how the lineal feet were running along that particular man's property.

Well, he came in and he said that he wanted \$22,000. And I said, "For what?"

He says, "Well, my client, who owns this big apartment house can't have his tenants park their car on this Back Street."

I said, "Well, since when have you got the right to overnight parking there?"

He says, "Well, we have a right right up to the wall there."

I said, "That's a public easement. You can use it in common with other property owners, but you can't use it exclusively by having dead parking overnight."

I said, "No, I will give you \$250. If you can take it, go ahead."

No. So we went to trial. And this fellow today is a prosecutor, too, and he wanted \$22,000, and he wound up with \$1 from the jury.

But still, I will turn around on those kinds of cases where it would cost me \$750 to try those cases. If I can get rid of them for \$75 or \$100 or \$125 or \$150—and that wasn't public works. It was MDC. It would cost me \$150 to bring my appraiser in.

Mr. MAY. Mr. Rosenblatt, the more usual case you would receive an appraisal or two on that you were not satisfied with.

Now, there were times when you settled a case for, say, 100 percent over the review board figure. Is that right?

Mr. ROSENBLATT. Yes, there were some like that. Yes.

Mr. MAY. Now—

Mr. ROSENBLATT. That's very easy.

Mr. MAY. In your deciding whether to settle a case at a given figure what sort of elements would you consider?

Mr. ROSENBLATT. I would consider the value of the property that was involved and, as I say, if it is, of course, residential property it's pretty hard to arrive at a value through capitalization. Your best approach there would be on a comparative sales—

Mr. MAY. Mr. Rosenblatt, I was not thinking—

Mr. ROSENBLATT (continuing). And—

Mr. MAY (continuing). Of the element of an appraisal. I was thinking more along the lines, would you consider the element of risk involved?

MR. ROSENBLATT. Oh, yes. That's what I was coming to. And then I would then, after I would come to that figure and say: Well, this is a bad figure, but what can the jury do in this case?

And, like the case I cited this morning to you people, I talked to the lawyer and I said, "Now, look," I says, "it's all right," I says, "to fight for a tithe and I was told that a tithe is a tenth of a cent."

I says, "You are looking for the 9 cents instead of the cent that this case represents."

I says, "You didn't lose your place where the teachers stay or a desk where the children sit." I said, "the only thing that happened here, now you lost a playground and how do you come up with \$332,000?"

Well, of course, I had that in mind and I think that this appraisal right here, when this fellow came up with \$22,000 he was about right, even though the board of review had \$12,500 and it could come somewhere between these two figures.

But I wouldn't go to that figure. I had to go higher. I went up to Volpe. I think I offered \$35,000, according to the notes that were sent down to public works, and I went to \$50,000.

And he thought I was talking through my hat because he says, "I won't change one cent. It is \$332,400."

I said, "Well, you will have to try it."

And, sure enough, what happened is what I thought would happen. They came up with \$99,398. And there was nothing in God's world that could give you that figure.

MR. CRAMER. Did you appeal that case?

MR. ROSENBLATT. No, that's the case that I told you I was afraid I have so many of a certain religious denomination on there, and I was afraid I would even lose that percentage if I grabbed another jury.

Those are the risks that you are taking in any one of these cases.

I had a certain case involving a religious denomination where I was told ahead of time, by my assistant that I sent down, I was told—I was on trial out in Boston—and my assistant, who was trying it, called me up after the first day and he said, "Look, they want you to give \$60,000."

And I said I won't. There was an appraisal of \$14,500 in this case, and I offered \$30,000 in the case on a \$14,500 appraisal.

And the judge said, "Well, I think you are going to get murdered. You ought to give him \$60,000."

I said, "Let the jury give it to him."

And I let my assistant try it. And my assistant called me back the second day, and he says that if they come in under \$60,000 the court has signified that there will be a new trial.

MR. SCHWENGEL. Now——

MR. ROSENBLATT. Wait a second. And if they come in over that, and "you want to make a motion for excessive damages, it will be disallowed."

Well, sure enough, they came in with \$29,900 and some odd right up to about the \$30,000.

Well, sure enough, a motion was made for a new trial, and it was allowed, and the second trial was tried but that case was already tried in the newspapers, and the second jury came in with \$57,000.

MR. SCHWENGEL. Now, let me ask——

Mr. ROSENBLATT. Those are some of the practical things that you bump into.

Mr. SCHWENGEL. These facts were brought to light?

Mr. ROSENBLATT. Sure.

Mr. SCHWENGEL. And the members of whatever church this was knew this, and yet the church members, who should be teaching the very best and be representing the public interest, too, were willing to take this. Is this right?

Mr. ROSENBLATT. Take it? They fought for it. They had a second trial, I just got through telling you.

Mr. SCHWENGEL. That is funny, but that is a funny religion that does it, is it not?

Mr. ROSENBLATT. Well, I wouldn't say so. I suppose it is a failure of human nature.

Mr. CRAMER. Well, this \$90,000 verdict that you had——

Mr. ROSENBLATT. \$99,000.

Mr. CRAMER (continuing). That you didn't think was supported at all on the evidence, you said that——

Mr. ROSENBLATT. Well, look, you tell me you are a lawyer. You tell me you are a lawyer.

I bring in \$22,000 and the second appraisal is \$4,500. That is the evidence before you. You are the jury now. The other side brings in \$332,400. Now, how do you get \$99,398 out of it?

Mr. CRAMER. All right.

Mr. ROSENBLATT. How do you get it? Sometimes they divide—you know, they throw a bunch of figures together. But here, there's nothing to throw——

Mr. CRAMER. If I knew how all juries operated I would win every case. You obviously do not know how juries are going to come to their deliberations, and you are not entitled to know.

Mr. ROSENBLATT. That's right. I agree with you.

Mr. CRAMER. All right. You said though that this \$99,000 verdict was not supported by the evidence. Is that right? Well, if it is not supported by the evidence then it is reversible——

Mr. ROSENBLATT. Yes.

Mr. CRAMER (continuing). By proper motion. Right?

Mr. ROSENBLATT. Well——

Mr. CRAMER. I mean, that is the basis for the reversal, the fact that it is not supported by the evidence.

Mr. ROSENBLATT. I wouldn't say it is as simple as that. You ought to know that a motion for a new trial is always addressed to the discretion of the court, and if it is, in his discretion, a correct verdict, no matter how much——

Mr. CRAMER. All right. What is your right to appeal? Would you appeal to a higher court?

Mr. ROSENBLATT. On a motion for a new trial?

Mr. CRAMER. Do you have any right of appeal?

Mr. ROSENBLATT. Sure, you have a right unless it is clearly erroneous. And, boy, I have seen some corks on what is "clearly erroneous" which becomes the law of the case in another case.

The question on the motion for a new trial is always, always addressed to the discretion of the presiding judge, unless you can show that that judge was arbitrary and capricious. Then you don't get any ruling on ——

Mr. CRAMER. I am talking about an appeal, to the appellate—

Mr. ROSENBLATT. There is no appellate court.

Mr. CRAMER (continuing). On excessive damages?

Mr. ROSENBLATT. Well, that is your motion for a new trial. That is one of the grounds you set up, and how are you going to argue it? The jury takes the view. The jury has heard one side, and the other side, and this is what they think it is worth.

You know what the rule of evidence is. It isn't what the appraiser said the case is worth. It isn't what the judge thinks it's worth. It's what the jury is seeing there and comes up with its own impression.

I can show you a case that we took $3\frac{1}{2}$ acres of property from a certain—from a 20-acre tract and they wanted \$10,000 in the case, and I said "No." I said, "I think you have been benefited here."

I said, "I can't give you that." And I gave him some ridiculous figure, about \$1,000 on the thing.

And they wouldn't take it, and I didn't blame them too much, but the jury went out and took a look at that location.

They came in with no damage. And the law says it was good law, because the remaining property had a greater value, as it was improved by the loss of the 3 acres than the 20 acres had in its original condition before the improvement, and the Supreme Court has said that such a situation could develop, that there would be an improvement to the remainder and, therefore, there had been no damage as a result of this public improvement.

Mr. CRAMER. Well, the only point I was making, which I think you agree with, is that if you start with the premise that the decision by the jury was not based upon the evidence then that is ground for reversal. Is that not right?

Mr. ROSENBLATT. Legally speaking, you are correct. Yes, sir.

Mr. CRAMER. I realize your problem.

Mr. MAY. Mr. Chairman, could we call Mr. Joseph Lyons along with Mr. Rosenblatt, and hear from Mr. Lyons with respect to some of these problems?

Mr. CRAMER. Now, Mr. Chairman, it is 5:20. Are you finished interrogating—

Mr. BLATNIK. He has been trying to finish for several hours. He is almost finished.

Mr. CRAMER. Well, I do not know whether we ought to go on to a new witness. It is 5:20 and it is going to take some time with this gentlemen yet.

Mr. MAY. Mr. Lyons will also be available during other stages of the hearing for the operation of the attorney general's office.

Mr. BLATNIK. Mr. Lyons.

Mr. CRAMER. Mr. Chairman, I move you now adjourn until 10 o'clock in the morning.

Mr. BALDWIN. I second the motion, Mr. Chairman.

Mr. BLATNIK. The chairman has bent backwards in violation of his own ruling and the policy of the committee, to give the members every opportunity to make inquiries on the particular points at the moment the witness is making them.

Repeatedly we have had digressions, and I know they are made with good faith, with good intentions of trying to clarify the record.

The Chair has done everything within its power to try to get a syste-

matic and logical flow of all of the evidence available to us, and there will always be room for questions at the end.

But those who consume the most time, and for whose benefits the Chair has bent backwards are determining these matters and we have a lot of witnesses for the next few days that we just must dispose of.

Mr. CRAMER. Well, I took it for granted that Mr. Lyons' testimony was equally as important as Mr. Rosenblatt's, and Mr. Rosenblatt has been on the stand now, due partially to interruptions from the floor since 2:15 this afternoon. And I do not know how you can possibly expect to dispose of Mr. Lyons today.

Mr. BLATNIK. If we do not he will be back. And it was made clear that he will be available further. Let's proceed.

Mr. ROSENBLATT. May I say this? I don't mind how late I stay today. I only have the room for today, and I would like to, even if you want to stay until 6 or 7 o'clock—it doesn't bother me—until you get through with me, but I would like to get back to my family.

Mr. CRAMER. I know; I am not questioning you. I am thinking about Mr. Lyons. That is the point I am making.

Mr. BLATNIK. Mr. Lyons, will you please stand up?

Do you solemnly swear that the testimony that you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LYONS. I do.

TESTIMONY OF JOSEPH F. LYONS, ASSISTANT ATTORNEY GENERAL, COMMONWEALTH OF MASSACHUSETTS

Mr. BLATNIK. You may be seated.

Mr. CRAMER. This is off the record.

(Discussion off the record.)

Mr. MAY. Mr. Lyons, in what capacity do you presently serve?

Mr. LYONS. Assistant attorney general in charge of the eminent domain division.

Mr. MAY. When were you appointed assistant attorney general?

Mr. LYONS. On January 21, 1959.

Mr. MAY. Could you give the committee a brief résumé of your experience and background, Mr. Lyons?

Mr. LYONS. I will be glad to, Mr. May.

I became a member of the bar of Massachusetts in 1950. I conducted a general law practice. I went into partnership with my present partner about 7 years ago, and maintained two law offices, one in Boston and one in Norwood.

My general practice, among other things, including estate work and tort work, had a great deal to do with the representation of the real estate brokers and builders. I was engaged as a principal in a large building development in one of the cities outside of Boston. I had sold real estate on occasion part time while I was in law school, and shortly after passing the bar.

And, well, other than that, Mr. May, just a general practice of law other than the highlights that I have pointed out to you.

Mr. MAY. Thank you. Now, you succeeded Mr. Rosenblatt?

Mr. LYONS. That is right.

Mr. MAY. As assistant attorney general in charge of the eminent domain division?

Mr. LYONS. That's right, Mr. May.

Mr. MAY. At that time did the attorney general give you certain discretion as far as the settlement of land damage cases would be concerned?

Mr. LYONS. Yes. Before I was appointed I was told that I would be in charge of the division; that I would have approximately seven or eight assistants assigned to me, assistant attorneys general; that the highway program had begun to reach its peak; that the number of petitions that were being filed against the Commonwealth indicated that negotiations would have to be conducted with the landowners and with their attorneys; and that I would have a certain limited discretion in that negotiating what we call, loosely, settlements with these attorneys.

My discretion depended primarily on the fee appraisals that had been given to me by the department of public works. In other words, I was given a percentage to operate on. I was given more or less a ceiling under which I could not go without the attorney general's permission. My discretion ranged anywhere from——

Mr. CRAMER. You mean "over" or "under"?

Mr. LYONS. I could not exceed——

Mr. CRAMER. Over?

Mr. LYONS. Over the review board, Mr. Cramer.

Mr. CRAMER. You said "under."

Mr. LYONS. I am sorry. My settlements, which I negotiated, went from, say, 3 percent in some cases to 5 percent, and I believe, in a couple of instances, I might have reached 11 or 12 percent over the review board figure.

I was to keep my eye on the fee appraisals that were rendered to me.

I was to consider, among other things, the appraisals that I would have to depend on if the trial attorneys were to try these cases.

And a review of the department record shows, as I believe, your staff has noticed already that in a number of instances the attorney general would find himself with a file in which he had a fee appraiser whose figure was in excess of the review board. That would be a consideration that I would give great weight to because if a settlement could not be negotiated then I would be forced to go up and have the case tried with an appraisal that possibly might be in excess of the settlement figure.

I can recall one occasion where the assistant in Worcester called me and said that he had been unable to negotiate a settlement, and the court, in a lobby conference, found out what the petitioner was looking for.

He asked the Commonwealth what their appraisal was and when he discovered that our appraisal was in excess of what the petitioner was looking for, he himself called me, the judge did, and indicated that he did not want to make a farce out of his courtroom, that the petitioner had indicated an amount less than we were counting on, and he suggested, and I think his suggestion was well taken, that we should consider further negotiations in this case.

That case did finally settle out. It was slightly in excess of my——

Mr. MAY. Well, what about a situation where the review board figure is x , yet the only appraisal with which the attorney general can go into court is in excess of the review board figure?

Mr. LYONS. I think the most striking example of that was in November in Middlesex County, where the attorney for the petitioner, the only land damage case I ever had with him, came in and as usual made more or less a full disclosure to me of his evaluations.

It was a vacant piece of land next to a supermarket. He said that it had been leased out by the owner to the supermarket for parking; that the rental a year was, I believe, \$1,000; and that when the same was capitalized out, it would indicate a capitalized value of \$12,500. This was according to his own appraiser, who is one of the better appraisers in Boston.

Mr. Rosenblatt is very well acquainted with this individual. I had two appraisals. I had one by the department, a staff appraisal, in the amount of \$3,100, and I had an appraisal by the fee appraiser in the amount of \$14,500, roughly.

The review board figure in this case was \$6,000.

I, after talking with the attorney for the petitioner, called the department. I believe I spoke with Mr. Dodge, and I asked him if his appraiser, the staff appraiser, had taken into consideration this lease.

He said he felt that he had, but if they hadn't that they would call the staff appraiser in and have him reconsider the case. Now, the reason they would do this, and I do this more often than not, is that basing my discretion on a review board figure, using that as my base, I had no other way of attempting to negotiate a settlement in this case unless the staff appraiser considered the lease, thought it had merit, and, based on the lease which was in existence, might revise his figure.

If he did revise his figure I then, as has always been my custom—I would have resubmitted it back to the review board for their consideration. But a day or so later the department called me and they said that their staff appraiser had revised from \$3,100 to \$4,100.

Well, the \$4,100 made no more sense than the \$3,100, but I happened to ask them why they stopped in the vicinity of the \$4,100 in the light of this long lease, and the reply to me was that he had vacant land adjoining the vacant land that was taken and the owner could now rent the adjoining land to the shopping center and realize the same income.

And Mr. Cramer and other lawyers on the committee know that we were definitely limited to what was taken, what was the income that he was getting from that land, and not what he was going to do with his adjoining land.

I couldn't prevail on the department to see the light of day, from a legal standpoint. The case went to court. The assistant attorney general couldn't put on the \$14,500 appraisal. He could only demand or depend on cross-examination.

The other appraisal was so excellent that the jury came in with a \$12,500 verdict, and I had an opportunity to settle that case for \$8,500.

I went to the attorney general. He said, "Your discretion is to a certain point. This is two or three times your discretion. Go in and try the case."

Now, there is a very good instance where the attorney general's office was in a real bind, so to speak. The Bureau of Public Roads, in discussions I have had with them, know approximately where I will go in order to effectively negotiate a case, if I can possibly do it.

There is a case where, if my discretion had been broad, I no doubt would have settled it for \$8,500 on my own.

MR. CRAMER. What do you consider your discretion above the Bureau figure to be?

MR. LYONS. Above the review board figure, Mr. Cramer, it varies some. It would be in the vicinity, possibly, of 10 percent. I have had attorneys try to pin me down as to what my discretion is. They will say, "We know you get 10 percent," and that is not so. In fact, in many cases recently I have been going about 2 or 3 percent above the review board and stopping there, particularly where our fee appraisers are either asked—either high or below the review board figure.

MR. MAY. Mr. Lyons, I think we should make this clear on the record. There are some people, strangers perhaps to the appraiser fees, who believe that it is possible to pick up an appraisal report and analyze it and say that this appraisal is fraudulent on its face. What do you say about that?

MR. LYONS. My answer, Mr. May, is definitely "No." They usually substantiate it with a comparable or comparables. They say they have investigated the property and they have tried to estimate the depreciation, although we know that is a dangerous habit in a way, particularly as Mr. Hunneman said, in old buildings.

They possibly may come in and they may show the actual income that the building was realizing at the time of the taking was \$20,000 a year. These people are our experts and if they give you a basis for their opinion and go on from there to a conclusion, I don't see any way where you can spot what is known as a fraudulent appraisal normally on its face.

MR. MAY. Mr. Rosenblatt, what do you have to say about that?

Is it possible to pick up an appraisal report and look at it and say, "There is a fraudulent appraisal"?

MR. ROSENBLATT. No. As I said, they can give you any appraisal that they want, according to what side hires them.

In fact, I once had to argue to a jury this way. The case that went—I think it was retried, too. The Commonwealth's appraisal was \$600. The petitioner's appraisal was \$35,000.

I had to destroy the Commonwealth's appraisal. I offered \$3,000—no; \$3,500 I offered on the case, and he wanted \$35,000.

Well, when it came to arguing to the jury I had to destroy my own appraiser to destroy the petitioner's appraiser, because here's what came out: My fellow said he was 30 years in the business as an appraiser, and he was president of the chapter out there, of the appraiser's society, and he came out with a figure of \$600. And the petitioner's appraiser said he was 25 years in the business, and he came up with the figure of \$35,000.

And I said to the jury that if 55 years of experience can come up with two ridiculous figures like \$600 and \$35,000 that my advice is that "you disregard both so-called appraisers and let's evaluate the evidence as it went as to what he paid for the property 10 minutes before what you would pay for it," and went along that line.

So you can't tell on the face. Sure, my fellow justified it, but it was a ridiculous figure. And the other guy, because after all, the figure came right down from public works, the board of review—that's all that it was. And that case had to be tried a second time.

Mr. CRAMER. If it was a ridiculous figure, why did you go to court with that appraiser, anyway?

Mr. ROSENBLATT. Who else was I going to go to court with?

Mr. CRAMER. Hire another appraiser?

Mr. ROSENBLATT. Still—I just tried to tell you. You got to get somebody that knows your property. On sand and gravel property there's few fellows that will qualify. We were lucky enough to get this one, as bad as he was.

And you know what the jury came in with? \$4,007.

Mr. CRAMER. Why did you not hire another—

Mr. ROSENBLATT. They tried it again and they came in with what—\$15,000?

Mr. LYONS. Davies came in with \$10,000.

Mr. CRAMER. So in the case you just mentioned you knew you had a bad appraiser to go to court with. Why did you not hire another appraiser to go out and reappraise the property?

Mr. ROSENBLATT. Look, I did all right with \$3,500 or \$4,000. They believed what I said. That was good enough for me.

Mr. CRAMER. You did not know what the jury was going to find.

Mr. ROSENBLATT. Of course I didn't.

Mr. CRAMER. Why did you not go to court with a qualified appraiser? That is what I am asking. That is the problem.

Mr. ROSENBLATT. Well, look, if I can find a qualified sand and gravel man I would do it, but you get an expert and he is an expert on everything. It can be a quarry and he is an expert. It can be a farm and he is an expert. It can be a commercial building and he's an expert. And in my book anybody that's an expert on all that kind of stuff is a faker.

Mr. CRAMER. So you should not have gone to trial with him. That is exactly what I am saying.

Mr. ROSENBLATT. Well, look, you are a trial lawyer. You will take the witness that you can get even if he is a bad witness sometimes.

You will say he is better than nothing. If you think you can get away with him, that is. Sometimes, like I showed you on the case where I said, well, I can't get hurt much, if I put my witness on he is going to give me \$11,000 floor, and I will take my chances without him, because I won't go anywheres near that figure. But if you haven't got a floor under you what do you care? You are in there for \$600. How much is he going to hurt you?

Mr. BLATNIK. Mr. May.

Mr. MAY. Mr. Lyons, we heard yesterday from Mr. Bennett of the Bureau of Public Roads that after you took over he had a meeting with you and at his urging you agreed that if you desired another appraisal to be made, you would, at his suggestion do it through the department. Is that right?

Mr. LYONS. That is my best recollection, Mr. May, yes.

Mr. MAY. So as of that point, the result of that agreement was to saddle you again with the incompetent appraisals that were being conducted by the Department of Public Works and their fee appraisers. Is that right?

Mr. LYONS. If they weren't incompetent, that would result, Mr. May, yes.

Mr. MAY. Did you become saddled with the same problems that Mr. Rosenblatt had, invariably inadequate appraisals?

Mr. LYONS. As I recall, back there 3 years ago, when I found that I desired another appraisal in a case, I believe that I would call Commissioner Dole and suggest that another appraisal be run on a case, particularly in cases where the damages were less than \$2,500, and they didn't have a qualified appraiser to testify.

As time went on, Mr. Dole would say to me, "Who would you suggest?" And I, having then got to know the men that we were working with, would make certain suggestions. I would suggest Mr. Jones or Mr. Smith, that we found had been good witnesses. And I believe it got to a point some months after this that Mr. Dole indicated to me that if the attorney general's office felt that it needed an outside appraisal, that I had his permission to retain an appraisal of our choice, forward the appraisal to his office for an evaluation by the review board, and send the bill to the department.

Now that has been our practice over the past 2 years. But may I point out to the committee, in every instance where I have hired an outside appraiser, without even looking at the appraisal—and that's the truth—without even opening it, I would send two copies down to the department and put the third copy in our file.

And if the case was reached for trial before an evaluation was put on it by the review board, I would ask the clerk to defer the trial until we had a chance to find out what the review board wanted to do with this appraisal.

Mr. MAY. Mr. Lyons, have you ever recommended that the review board also consider the appraisal reports made on behalf of the landowner?

Mr. LYONS. Yes. That was Mr. McCormack's suggestion to me and, in turn, by me to the department. This was as a result of a meeting in the Governor's office with the Bureau of Roads' officials. I believe Mr. Whitton was there at a time last May when we were trying to work out the reevaluation of the entire State.

At that time Mr. McCormack said that he thought from a trial standpoint, if the review board was aware of the petitioner's appraisal, the elements of damage claimed by the petitioner, if they had a chance to consider these, that they might see the light of day as we were seeing it from a trial standpoint or attempting to negotiate settlement.

We received the Bureau's permission—I can recall the words of the individual, "they can consider any evidence at all in arriving at their determination of value."

I, in turn, then in the next week or so had occasion to have an appraisal handed to me. Sometimes these attorneys would say, "here is my appraisal, Mr. Lyons: compare it with yours."

I don't think I ever on occasion handed them our appraisal. But these people voluntarily handed their appraisal to us.

I would look at it and find certain elements in it that we didn't have, and I would suggest, with their permission, I would forward it to the board of review.

I remember one attorney, who apparently didn't trust me, and I think I had to seal the envelope in his presence and send it to Commissioner Dole with the instructions inside that it be mailed back to him after they had looked at it.

Mr. CRAMER. Are you saying then that your procedure is that when you do get an outside appraisal—in how many instances do you use outside appraisers?

Mr. LYONS. Not too often, Congressman Cramer. On a percentage basis, possibly, somewhere in 5 to 10 percent of the cases I would find it necessary. I will tell you, particularly where we would call for an outside appraisal or third fee appraisal, would be where you have an appraisal by X in the amount of \$10,000 and appraisal by Y in the amount of \$10,000, both apparently competent men, and the review board might come in at around \$12,000 or \$13,000.

In a subsequent conference with the petitioner if he indicates that he is looking for \$28,000, I am looking at a \$28,000 appraisal.

Is this man right or the \$10,000 man? The review board has indicated that they think the \$10,000 is closer to the truth by coming in at \$12,000. I, in that case, would if I found that the petitioner's lawyer was sticking at the figure of around \$28,000—I would, justify our own case, call for a third appraisal to find out where we stood.

Mr. CRAMER. You say that it is in about 10 percent of the cases?

Mr. LYONS. Approximately, Congressman. I would say it would not be any more than that in cases where we already had fee appraisals. I would say that in cases which were under \$2,500 in our evaluation, and the petitioner was looking for upward of \$5,000 or \$6,000, I would attempt to get an outside appraisal in that case for two reasons:

One, was the case worth more than \$2,500? And, at least, give the review board a chance to look at it, which they hadn't had up to that time.

No. 2, if it wasn't worth more than \$2,500, we would have an expert testify for us. As Mr. Rosenblatt said, he had been stuck many times without a fee appraiser.

Mr. CRAMER. Now, did you use an outside fee appraiser or, rather, if you did use an outside fee appraiser do I understand then that you would submit that new appraisal back to the board of review?

Mr. LYONS. In every case, sir. Unless it was under \$2,500.

Mr. CRAMER. And then ask the board of review for a new figure, in effect?

Mr. LYONS. I would submit it for their consideration, and many times the figure would stay the same. Many times they would, based on the new appraisal that was submitted to them, raise their figure.

Mr. CRAMER. Are you talking about cases where you are negotiating for settlement or cases that you expect to go to the jury?

Mr. LYONS. In both instances. I might have occasion to call for an outside appraisal in both instances. I think I have got a good one which Mr. Rosenblatt mentioned here this afternoon. This man from—I believe he was from South Deerfield, according to Mr. Rosenblatt's testimony.

That gentleman was in at around \$6,000 in that case and we had—

Mr. ROSENBLATT. \$4,000.

Mr. LYONS. I beg your pardon?

Mr. ROSENBLATT. \$4,000.

Mr. CRAMER. Who was that? Was that Jacobs?

Mr. LYONS. No, I think it's another appraiser. I think his name is Mr. Giorgole.

And the review board was somewhere in the vicinity of \$6,500 or \$6,800. Mr. Rosenblatt, as I recall, in conferring with him, had an appraisal of approximately \$18,000.

Of course, with a \$6,500 review board figure I was completely tied either to \$4,000 or to try to see whether or not the case was worth more.

I called for an outside appraisal in that case and submitted it to the review board. The appraisal came in, unknown to Mr. Rosenblatt because the end of the story, I think, is something that he doesn't particularly like.

The outside appraisal came in at \$11,500. I submitted it to the review board and they raised their figure on the case from \$6,500, I believe, to \$7,500. It wasn't enough for us to negotiate any further.

I told Mr. Rosenblatt we would have to try the case, and Mr. Rosenblatt proceeded to try it. Mr. Rosenblatt, good attorney that he is, summoned in the fee appraiser that I had asked to go out and appraise the property. The assistant attorney general trying the case did his best to keep that witness from testifying for Mr. Rosenblatt and was successful.

Mr. Rosenblatt put in his evidence. Then the defense came along. We put on Mr. Giorgole, and you heard Mr. Rosenblatt's description of his cross-examination this afternoon, and he was successful in getting this gentleman disqualified in this particular case.

The assistant attorney general then called me up and he says, "We now no longer have the \$4,000 appraisal" and he says, "My own honest opinion, from the box, is that if I attempt to put on even the \$11,500 appraiser in this particular case we are going to look very bad with the jury."

I went up to see the attorney general. The attorney general gave me a little more authority in the case, based on the problem that we had and rather than put a base on us of \$11,500, and depend no longer on cross-examination, because his case was in, I had authority to offer Mr. Rosenblatt approximately \$10,000-some-odd, to which interest added, and I think the interest was worked out at around \$11,300 or \$11,400.

MR. ROSENBLATT. \$11,520.

MR. LYONS. \$11,520. I thought that was a fairly interesting thing to bring to the attention of the committee, considering the problems that we have from the trial standpoint.

MR. ROSENBLATT. If I had known that, I would have let him go to the jury, see?

MR. MAY. Excuse me, Mr. Lyons. Mr. Rosenblatt, just briefly now, what do you think of the suggestion that the review board consider also the landowner's appraisal?

MR. ROSENBLATT. Well, I think that is an excellent idea. I have always advocated a thing like that. I have talked to this attorney. I talked to George Fingold along this very same line.

I said it would strengthen the review board's approach on the case, because then even if certain matters are left out of their appraisals, that is outside fee appraisals, the other side would be sure if they had a chance to present their side of it in an informal manner, to have that called to their attention. And, therefore, they would be put on their guard to consider it in arriving at valuations as determined by their appraiser, and that happened once.

It's the only time that I know, in the 6 years that I was there, when the board of review changed its own findings because I—the attorney for—it was a marine shipyard that was taken.

And it ran over \$200,000, but they had lost in their appraisal somewhere around \$70,000 worth of important property that wasn't even in the report.

MR. MAY. So——

MR. ROSENBLATT. And it was called to my attention, and I turned around and I went up to the board, and I, without letting the petitioner come in—because I was lucky to come up there myself, anyway, so I couldn't get the petitioner up—but I brought this to their attention and the board of review turned around and they upped it, I think. I think it was \$50,000 or \$60,000, which they upped it just on their own, by knowing that which the other side had.

MR. LYONS. I believe I was interrupted—I am only using the word loosely—when I was explaining our thinking along that line, Mr. May.

In the cases initially that I did send down to the review board with the petitioner's appraisals, the review board returned the appraisals to me, and they told me that their contract with the Commonwealth called for them to review Commonwealth appraisals and data, period.

And that inasmuch as this was not a Commonwealth appraisal they didn't feel it was within their prerogative to consider it. I notified the Bureau of Roads.

I believe I talked with Mr. Bennett, possibly, on it. And it was the suggestion of the Bureau that I put them in sort of through the back door, so to speak; submit them down to the review appraiser in the department. Let him see the appraisals. If they had any merit, let him furnish them to the review board.

MR. MAY. We should point out that for several months there have been review appraisers in the department reviewing appraisals.

MR. LYONS. Yes, I think it dates back 5 or 6 months now, Mr. May.

That was done on the three or four occasions that I did submit it to the review board. I do not believe the review board revised this figure in any one of the cases. At least, I understand they were submitted to them. Whether they considered them or not, I don't know.

MR. CRAMER. Do you agree with Mr. Rosenblatt that 70 percent of the appraisers are bad?

MR. LYONS. Mr. Cramer, I have been told by the attorney general from the outset that I was to base any negotiation that I had with the petitioners' attorneys on the appraisals that were furnished to me by the department of public works.

In other words, they were our experts. I have listened to Mr. Beasley here the past week in which he pointed out that in a number of cases the three approaches that may possibly have been available to these people were not taken.

I found personally that a number of the appraisals were brief. They were one or two pages in length, in which they spelled out their evaluation. But I do not believe that I was in a position, as an attorney, without Mr. Rosenblatt's background, to form an opinion, at least in the first year or so that I was there, as to whether or not these people had been rendering what is——

Mr. CRAMER. What is your opinion now, after having been there this long? What is your opinion now?

Mr. LYONS. My opinion is today, Mr. Cramer, and it has been for the past 6 or 9 months, that definitely some tightening up and some cleaning house in the way of making sure that the appraisals were rendered in an orderly and in a professional manner definitely was needed.

I think the new procedure that the Bureau of Roads has asked the State to follow, which Mr. Dolben commented on here this morning, this 35-point procedural memorandum that they sent out, will do a great deal in bringing these things into appraisal conformity, if I can use those words; that we will definitely see a much higher and more workable appraisal being rendered to the Commonwealth and, in turn, of the cases that go to trial.

Mr. CRAMER. And if, in effect, what Mr. Rosenblatt says is true and, of course, you indicated that you yourself don't have as much experience as he did in judging them in your first year in office——

Mr. LYONS. No, I didn't sir.

Mr. CRAMER. You, in effect, then had to go to court with these appraisals and if Mr. Rosenblatt is right, that 70 percent of them were not sufficient to go to court with, that has the effect——

Mr. LYONS. Well, I don't know whether Mr. Rosenblatt said they weren't sufficient. He didn't care for them. He did, himself, say that he would go to court. Mr. Cramer, with these appraisers on occasion when he would have to go to court.

We certainly depended upon the experts that were furnished to us by the department for the first year or year and a half. We had no reason to suspect them. They had been reviewed and I honestly mean this, that we sincerely believed——

Mr. CRAMER. Reviewed by whom?

Mr. LYONS. That the review board was reviewing these appraisals; that the opinions they were placing on them was the opinion rendered by five competent men in the field.

The staff appraisal was being reviewed and approved by apparently somebody who knew what he was doing, and that there was, at least, a further check being made by the Bureau of Roads through Mr. Bennett's services in Massachusetts.

Mr. CRAMER. Now, when you found out, after being in your office for a period of time, that this was not the case, what did you do about it?

Mr. LYONS. Well, actually, Mr. Cramer, the situation started to come to light, I think, somewhere in the year 1960. I believe the staff members of this committee came into Massachusetts somewhere in the latter part of 1960.

Mr. McCormack, when he, from the reports that we were getting, felt that possibly we might have some appraisals in the files that were awaiting court action that were not competent or possibly even could be fraudulent from the reports that we were reading, spoke with Mr. May and Congressman Blatnik in the latter part of the summer of 1960, and he made repeated demands on the Bureau to furnish the Commonwealth with the names of the appraisers who were, at least suspect at that time.

I have a memorandum that was given to Mr. McCormack by Commissioner Ricciardi, following a trip to Washington in January of

1961, in which, I believe, he uses the word he "pleaded" with the Bureau to tell him the names of the cases and the appraisers that were suspect.

Mr. CRAMER. Did you ask this committee for the names?

Mr. LYONS. At this time I do not believe that your staff investigators were in a position to give names. They were investigating—they were in the preliminary stages of their investigation.

The Bureau again twice, once in my presence in the Governor's office, was asked and Mr. McCormack again pleaded with him to give the State the names of the people that they were suspicious of.

Mr. CRAMER. So he refused to give them to you?

Mr. LYONS. Well, I don't say that he refused to give them, but let us say this: We never did receive them. I think the first time we received anything in the way of memorandums which would indicate to us that X, Y, and Z might be under suspicion was somewhere around July of 1961, about 6 months ago.

Mr. CRAMER. Now, it is true, is it not, that the attorney general likewise has the power to investigate?

Was there any effort on his part to look into it himself and try to find out who they were and what the problem was?

Mr. LYONS. The attorney general, Congressman Cramer, granted, does have the power to investigate. But he must have facts to go before a grand jury. I have heard it said that possibly the grand jury should have been presented with certain evidence here. Massachusetts—

Mr. CRAMER. But that is the end product of the investigation. Right?

Mr. LYONS. That's right.

Mr. CRAMER. The presentation to the grand jury is the end product of the investigation. But was an investigation ever put into effect to determine whether a grand jury presentation should be made?

Mr. LYONS. Well, at this point, Mr. Cramer, I believe there were four or five different Federal investigations being conducted in the State of Massachusetts.

The information that was being elicited from witnesses that had been talked to was being turned over and legally, I suppose, right, and so on to the law enforcement officer for the Federal agency, namely, the U.S. attorney.

Mr. CRAMER. Well now, the Bureau told the State what appraisals and what appraisers they refused to pay Federal matching funds on.

Do you mean that information wasn't available to you from the department—to the attorney general from the department of public works?

Mr. LYONS. The Bureau withheld, as I recall, approximately \$12 million on reimbursements that were due the Commonwealth.

Mr. CRAMER. When did your office learn the names of the appraisers that made appraisals that the Bureau thought were so bad that they cut funds from them?

Mr. LYONS. I don't think I can answer the questions as it was phrased. The Bureau cut funds off from the State of Massachusetts but never did, to my knowledge, Mr. Cramer, notify the State as to the cases that they were cutting funds off on, nor appraisers that were—

Mr. CRAMER. Well now, by the "State" do you mean the department of public works or the attorney general?

Mr. LYONS. I am talking about, as far as we are concerned, the department of the attorney general.

And to my knowledge the department of public works was never notified as to the cases or, at least, up until possibly the middle of 1961, the cases or the appraisers that the Bureau was suspicious of, and was withholding funds, until a review could be run on the entire State.

Mr. Beasley had been in Massachusetts, I believe, for approximately 9 months at that time; had undoubtedly run a number of appraisals and had furnished his information to the Bureau of Roads. As a result, Mr. Beasley's appraisals or reappraisals were never made known to the Commonwealth of Massachusetts.

Starting in February or March, when we attempted to negotiate—

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Let him finish first.

Mr. LYONS. Starting in February or March, Mr. Cramer, we attempted to negotiate with the Bureau to see what could be done in order to have some of the funds released.

There were trips made by the attorney general to Washington on two or three occasions.

Mr. CRAMER. And at that time were the names discussed or the problem discussed?

Mr. LYONS. The problem about reimbursement was discussed, and the Bureau at that time, I believe, or shortly thereafter, agreed to cut down the holdback to approximately \$6 million.

Then apparently—

Mr. CRAMER. Then if the problem was discussed at that time the State authorities must have been informed that the Bureau had reason to believe that fraud had occurred?

Mr. LYONS. They had reason to believe, they indicated to the Commonwealth, that there were some properties on which excess payments had been made, but it is my understanding that no names of cases or appraisers were even given to the Commonwealth up until that time—not even at that time.

Mr. BALDWIN. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. BALDWIN. Mr. Lyons, the implication of your statement is that even though these were State employees, hired by the Department of Public Works of Massachusetts, responsible to that department, and the cases were tried by the State attorney general, that, nevertheless, the implication is that your department would just sit around until the Federal Government would come in and find some irregularities and expect the Federal Government to provide the information to you.

You have the independent obligation—

Mr. LYONS. Well, Mr. Baldwin—

Mr. BALDWIN (continuing). As State attorney general to determine whether or not the employees of the State are not complying with the laws of the State of Massachusetts.

Mr. LYONS. Mr. Baldwin, the information, assumedly, was in the possession of the Federal Government at that time.

The attorney general, I believe, wrote to the Bureau and informed them of the predicament that he was now being faced with, of pos-

sibly using fee appraisers who were suspicious at the time and possibly were guilty of the charges that they were suspicious of.

And yet there was no information that was forthcoming from the Bureau to the attorney general's office, enlightening us as to people we might be using the next day as an expert witness in a case that might be a fraudulent case, and Mr. McCormack felt very strongly that that information should be turned over for the State's protection.

And, as I said to Mr. Cramer, there were five different investigations going on at that time, five of them. And a number of these witnesses had been before the grand jury that had been impaneled almost 2 years ago from this State.

At that time they had been sitting approximately 1 year. And any information that these witnesses may have given to that grand jury, they were sworn to secrecy on, even if Mr. McCormack or Mr. X approached them and asked them for certain information.

He was aware of these problems. We talked with the staff members of your committee. We were put on notice some months ago about the cases that they had become suspicious of, and that facts certainly pointed up a very suspicious character about certain cases.

Mr. McCormack at that time—I believe it was in the middle of the summer—knew, on information that he had from your staff members, that this committee hearing or subcommittee hearing might be conducted before the year was out.

He made the decision at that time, even though he knew these cases, not to proceed on the cases or against these appraisers until this full committee hearing was held and was disposed of.

Mr. CRAMER. Well, the Federal Government took a different attitude about it. They went on ahead and got indictments.

Mr. LYONS. They did, Mr. Cramer.

Mr. BLATNIK. Mr. May.

Mr. MAY. I want to point out one item. Generally speaking, there is a considerable delay from the taking of the property before all the procedures are gone through and the case eventually winds up in the attorney general's office?

Mr. LYONS. There is a considerable delay usually.

Mr. MAY. Frequently by that time the property has been altered due to the construction of the new highway?

Mr. LYONS. It certainly has, Mr. May.

Mr. MAY. So it becomes rather difficult at that time, when the attorney general's office discovers that it is now saddled with a couple of incompetent, inadequate appraisal reports, to now go out and make an intelligent appraisal of the property?

Mr. LYONS. In many instances, as Mr. Rosenblatt testified to, it would be an impossibility.

Mr. CRAMER. Now, Mr. Chairman, on that question, I previously suggested that we ought to hear from Mr. Beasley, and he is sitting back there and may he state his—

Mr. LYONS. May I bring one thing to your attention? That I believe Mr. Beasley has testified that it is possible to appraise a piece of property by going in, doing a market data research on it, by expenditures, talking to the property owner and so on, but our problem is not whether or not he can do an appraisal, but can he qualify as an expert witness.

And Mr. Beasley may be able to testify as an appraiser as to value, but he certainly would not qualify as to or as an expert in any of these cases because he didn't know the property at the time of the taking.

MR. CRAMER. Well, I would like to have Mr. Beasley testify on that point.

MR. BLATNIK. Is Mr. Beasley here?

MR. BEASLEY. Yes, sir. Would you like to restate that, sir?

MR. CRAMER. Yes. Are you, as an appraiser, capable of making an appraisal of property after the act of a taking has taken place in a sufficient manner to be able to present evidence in court?

MR. BEASLEY. Well, we have two points that have been raised here, the question of the qualifications, and the question as to the ability to appraise. The answer to finding the value is "Yes." I think there is a legal question here, concerning when you would view the property.

Now, it would follow, for instance, in certain types of cases which you personally have participated in, that you could testify if your evidence was the only available evidence. If there was an appraiser who had seen the property or who had viewed the property at the time of the taking, that, I think, would be the law in most any State, and it does raise a problem of bringing appraisers or experts after the facts.

It is a turn of law which I have no control over. The ability to find value is available. It can be had and it is used continually.

As a matter of fact, at this moment the Department of Justice is having appraisals made on the Indian reservations of this country to determine claims for Indians, and they go back into the 1800's.

Certainly none of the people who are appraising those today lived in those days, but they still are the only available qualified individuals who can present evidence of this type, and they do it as a result of research and study.

Now, our work in Massachusetts has been as a result of research and study. Lots of the properties we did see. We did view lots before they were taken.

I think that under the circumstances, having all facts before us, we would be admitted as experts on that. Where the properties were turned down——

MR. CRAMER. In many instances those properties you viewed are properties that notice had been sent to the owners of intention to condemn, are they not?

MR. BEASLEY. Exactly. However, we did not make our inspection at the time that that notice was given which, I think, is a part of the law of the State.

MR. BALDWIN. Mr. Cramer, would the gentleman yield?

MR. CRAMER. Yes.

MR. BALDWIN. I would just like to point out, in corroboration of one statement that you made, that the State of California right now is before the Indians Commission.

The Indians Commission has found that we owe the Indians of the State of California for the acquisition of the whole State of California back around 1840, and the determination is now being made by a set of appraisers as to what the valuations are that we owe the

Indians after the whole State of California was taken, that is around 1840.

There is no man living who saw the property at that time, but this determination is being made by a set of appraisers.

Mr. BEASLEY. Probably one of the largest appraisals that has ever been made in the history of the appraiser business.

Mr. CRAMER. Mr. Rosenblatt, you stated that in many instances, after you got these appraisals and the condemnation took place, that is the petitioner filed his petition for condemnation, that you went out and viewed the property and came to a decision as to what its value was. Couldn't another appraiser do exactly the same thing?

Mr. ROSENBLATT. What do I need him for? Give him another—

Mr. CRAMER. You need him for evidence in court.

Mr. ROSENBLATT. Wait a second. The statement made by Mr. Beasley is not the law of Massachusetts.

The statement of the law which he brings out only applies to special use property, and that was decided in the Newton Girl Scout Council against the Massachusetts Turnpike.

Where, if you are a specialist in that particular type of property—it was a Girl Scout camp, and it didn't matter if you were a specialist from Oregon or Washington or Florida—the specialty of that type of property, of putting these camps together, then that person is qualified.

But that rule is not extended to any and general property which Mr. Beasley gives you the inference that it does. He could not qualify in Massachusetts.

Now, here you have four good men, five good men, on our review board who are good real estate men in our State. They were brought in on another case by Mr. Sullivan, when he was alive, and knew what their background was, and they were disqualified as to being able to qualify on that particular property because they did not see the property at the time it was taken.

Mr. CRAMER. All right. I can only take your opinion in that you are an expert.

Mr. ROSENBLATT. I am not an expert. I am citing a Supreme Court decision. It isn't my judgment.

Mr. CRAMER. Well, with regard to the law of eminent domain in Massachusetts, and I respect your opinion, based on the Court's opinion.

But that does not negate the authority you have or the power you have, and I think the duty you have, or, Mr. Lyons, if in fact the property still exists at the time condemnation is filed, and you think the appraisers are bad to go ahead and hire a new appraiser. Is that not true?

Mr. ROSENBLATT. Well, you have to—

Mr. CRAMER. How else are you going to protect the interests of the State?

Mr. ROSENBLATT. You have to use your own judgment. If I am going to take Mr. Beasley, and my judgment is as good as his, without being egotistical about it—I don't need Mr. Beasley as a crutch.

If I needed him to help me out, yes. Now, I am preparing a case where I've got to bring in an engineer on the construction of burner rafters, I have got to bring in an engineer on the question of putting

in vents. I have got to bring all of these specialists together, and then I get my expert, like Mr. Beasley, to put all of these and correlate all of these facts together to get my value. Each person is supposed to develop his particular speciality when it comes to a special piece of property.

Mr. CRAMER. I realize that. Now, let me ask Mr. Lyons:

Is it not true that a—let me ask you: What percentage of the properties, if you can give a fair percentage, are still in appraisal form, that is they have not been destroyed, at the time that condemnation is filed by the owner? There is a percentage of those cases, is there not?

Mr. LYONS. Well, sometimes, Mr. Cramer, you will find a landowner will go right to an attorney and he will file a petition immediately or in a matter of months.

Mr. CRAMER. And then the property is there and you can hire another appraiser?

Mr. LYONS. Yes. Under our State law they have 4 months before they have to vacate the premises. That is by law.

In that instance there you possibly, I suppose, could find an appraiser who knew the property and the area at the time of the taking, and he can go out and look at it if it hasn't been changed by construction.

But I think more often than not you will find that petitions are coming in 10 or 11 months after the taking, when an attempt has been made to settle it with the department, and by the time a conference is called for it, it could be 15 to 18 months from the date of the taking before the initial conference is held, and at which time we have some indication as to what that property owner is looking for.

Now, if construction is moving as quickly as it is reported to be in Massachusetts, and Massachusetts is finding itself with no lead-time which is the thing that the right-of-way division has been screaming for for years, I assume at that point that the construction is well on the way.

Mr. CRAMER. Now, you assume it.

Mr. LYONS. No. You asked me for a percentage, Mr. Cramer, and I am saying that—I am trying to answer you that if the construction is moving that quickly, that at that point there would be some construction having been worked on this particular—

Mr. CRAMER. Now, how many of these cases that you felt outside appraisers were needed on, did you go out and take a look at them to find out if they were in appraisal condition?

Mr. LYONS. I have looked at a number of properties. In fact, I was advised here that I looked at some in the same city as Mr. Rosenblatt, up in North Adams, in Worcester, Norfolk County.

When I would assign an outside appraiser to a case I would find in advance from the attorney for the property owner whether or not it was still in appraisable condition. My next question to the appraiser—

Mr. CRAMER. From the attorney for the property owner?

Mr. LYONS. In other words, "is the house still standing, Mr. Lawyer?" Has the bulldozer come in and taken your driveway and your cesspool, and the garage, which the order of taking says it is going to take?

In other word, I am asking the lawyer is the property in a condition that it can be appraised now by somebody that I would like to send out to look at it.

And he may say, no, the property is torn down. Now, I am in a real box. If he says that the property is still standing then my next problem is to find an appraiser who will qualify on the grounds that he was familiar with the area and familiar with the property at the time of the taking.

That was the thing that I think Mr. Rosenblatt was trying to stress with Mr. Beasley, that maybe Mr. Beasley can render an appraisal, but will he qualify on all properties that are still standing on an appraisal he made a year or 18 months after the taking was made?

MR. BLATNIK. Mr. May.

MR. MAY. Just one more point: Does the Bureau of Public Roads allow an assistant attorney general to consider an element of risk in settling a land damage case?

MR. LYONS. It is my best recollection, Mr. May, that a PPM came out approximately 18 months ago to 2 years ago in which it stood out at that time, to my eyes, that the trial attorney for the various States shall not consider the risk of trial nor the cost of trial.

I have tried to locate that PPM among my own records, and have not been able to do so. But I do note that in the PPM, dated December 30, 1960, to which there has been some reference made at these committee hearings, that there are certain things which Mr. Rosenblatt brought up here which are still about to be considered, and I consider them trial risks.

One that sticks out is the likelihood of sympathy for the owner, and we had a case where a fellow operated a gas station. He had no—he had stumps for arms and he had stumps for legs. He had two pumps at his station.

His customers would come in, pump their own gas, make their own change, and we took the front off of his gas station and left him with a grade of about 20 feet in front.

The trial attorney, who tried that didn't know the condition physically of this landowner until he went over to try it. He got as fast as he could to a phone booth and said, "Joe, we have a real problem here. If you could see this owner you would bet your bottom dollar that the jury is going to come back for every nickel that he is looking for because of his physical condition."

In that instance I went up to see Mr. McCormack, and he gave me a little more discretion than I normally would have. But there is a case, if I followed this PPM to the letter, I probably wouldn't even have gone to see him.

The "likelihood of sympathy for the owner," is what it is called.

MR. MAY. Mr. Lyons, Mr. Rosenblatt testified that he had jury trials on some 198 cases out of some 3,100.

MR. LYONS. Yes.

MR. MAY. How would your figures compare to that?

MR. LYONS. I will be able to submit to the committee before your hearings conclude the exact number of jury trials that we had had. My best approximation at this time, Mr. May, is that for the time we have been in there, since January 1959, that we have tried approximately 125 to 150 jury trials.

And in the same length of time we have negotiated with landowners, if these records are correct, which were obtained last week, by devious means for our own files and for the department files, that we have negotiated 219 cases.

And I think these figures speak well, Mr. May, for the last 2 or 3 years in this department. Now, I have got total figures here:

Petitioners totally in these cases are approximately, and this is what they were looking for, \$8,800,000. The board of review's figures on these cases, and in some cases there would not be a board of review figure, because it was under \$2,500, is approximately \$5,400,000.

And we have negotiated with these landowners, in all of these cases, and have paid \$5,800,000.

We have paid approximately \$3 million less than they were looking for and approximately \$400,000 over what the review board said was top value or whatever word they used.

Approximately, and I haven't figured it out on another percentage basis, but I think the figures speak for themselves—

MR. CRAMER. Those are cases in settlement or condemnation or both?

MR. LYONS. Those primarily—they are all cases that went to condemnation, as you put it, Congressman. These would be cases that, after suit was started against the Commonwealth, an agreement was reached between the landowner.

Some of them were agreements for judgments where they didn't exceed \$2,500. Those that did exceed \$2,500, and exceeded the review board's figure, would then be court judgments.

MR. CRAMER. What is the record on condemnation jury trials?

MR. LYONS. We have found, Congressman, from a jury trial standpoint—I will have those figures available for you, too, sir—that we have done fairly well, if we can use it selfishly, in jury trials.

We have had two or three instances where the juries greatly exceeded our appraisals, but in most cases I would say that they have come in somewhere around 15 to 20 percent, 25 percent, over the review board figure which is our base.

And I think that is something that the committee should be aware of because the discretion has been given to me, of approximately 8 or 10 or 11 percent, if those same cases had gone to a jury and the percentages had help up, we could well have found that we would be paying, instead of 10 percent over a review board figure, 25 or 30 percent.

We have been fortunate I think. We have had some excellent men trying them. We have been fortunate, as I pointed out to Mr. May, that in a number of cases these special purpose buildings where appraisers, the ordinary fee appraisers, as Mr. Bennett refers to them, the residential appraisers have been assigned to the special purpose building.

Now, when the case is being prepared for trial and the assistant, who is preparing it, sees the appraiser is not an expert and knows well that his man will not qualify as an expert—I keep repeating that we have been fortunate to be able to get an expert who can get out and look at that property and who has subsequently qualified.

It has been through the grace of God, and in many of these cases the Commonwealth could have been hit for hundreds of thousands of dollars.

Mr. CRAMER. Are you telling this committee that during the period that you have been assistant that you didn't find appraisals which you thought were fraudulent?

Mr. LYONS. Yes, I definitely am, Mr. Cramer. There is no question—

Mr. CRAMER. With all this evidence of fraud and improper appraisals that have been discovered by the Bureau and by this committee, and by the U.S. district attorney's office and by the FBI and so forth, you were not able to detect any of those in your functions, in examining the appraisals in preparation for trial?

Mr. LYONS. Well, many times I wouldn't be the party who would be examining the case. You may not get a call from a lawyer—I will answer your question. You may not get a call from the attorney on the other side.

Some of them have an idea as to what the offer will be. They know they are not where they should be, and they will let the case be referred for trial and wait for an assistant to prepare it.

There are a number of cases that I don't get a look at the file. But in any case that I have looked at, it has never been brought to my attention, by a personal examination of the file, that there was fraud.

The cases that we have heard to date, Mr. Cramer, I think in all instances were cases that were negotiated at the department level. That would be the DPW level.

Mr. CRAMER. You did not notice any similarity in any of the cases that you handled that went to condemnation or settlement through court, similarities between the appraisals turned in by the fee appraisers and the work done by the department of public works?

Mr. LYONS. My best recollection is that I would find very often, on small parcels, that the appraisers would be close and that is a matter of necessity.

Mr. CRAMER. I do not mean the amount of money. I mean the information contained in the appraisal.

Mr. LYONS. The information? Well, I prefaced everything I said here this afternoon by saying that we started off with the assumption that these were our experts, and that they were people who were paid by the Commonwealth to do a job for us.

In other words, there was nothing in our mind that would indicate that it was our first job to make sure that there hadn't been anything wrong initially in the case.

Mr. CRAMER. But it is your job also, is it not, in preparing for the trial or settlement, either one, but in particular for trial, to make sure that that appraisal evidence, the evidence in the appraisal, the facts that go into making up or contributing to the final figure, are adequate to qualify that person who made it as a witness? Are they not?

Mr. LYONS. Yes, that would be one of the requisites of the trial attorney, that his witness qualify. Yes.

Mr. CRAMER. All right. And in determining whether you had an adequate case to go to trial on, you, of necessity, had to pretty carefully scrutinize these appraisals, did you not?

Mr. LYONS. Yes. There have been instances where we had no before-and-after value, which is the approach that the appraiser must take in the Commonwealth, and I personally know of assistants going

out to the appraiser and asking him to come in with the before-and-after so he would qualify on the stand.

Mr. CRAMER. Based on the appraisals that you have before you, after your study of them in contemplation of going to trial with these witnesses, you did not at any time discover anything that looked fishy to you or that looked fraudulent or that looked improper, that looked like maybe it was copied from department information contained in the fee appraiser's report?

And you have heard the evidence with regard to the——

Mr. LYONS. I heard the evidence. May I say no, Mr. Cramer, I certainly did not spot anything that was fraudulent and may I also say this, that the evidence that has been elicited through the witnesses, or through the staff workers here, was that it appears that certain individuals may have had access to department staff appraisals.

Mr. Rosenblatt has testified this afternoon that the staff appraisers, in his opinion, would never qualify. Our experience has been in one or two or three instances, where we were stuck with nobody but a staff appraiser, that he has qualified.

Yet, in the majority of cases he will not. Therefore, when you are preparing for trial, the staff appraisal, which is usually half a page—it is a summation of the staff appraiser's opinion—that opinion, from a trial standpoint, is given little weight, because we know in all of the cases where we have a fee appraiser available that we will not use him.

I think we have used them recently in one case, on a large case in Boston, and we were fortunate enough to get this man to qualify.

Mr. CRAMER. Well, then I gather that you just disagree with Mr. Rosenblatt as to the lack of qualifications on the part of many of the fee appraisers. He said 70 percent were bad, whose information you had to use in going to trial unless you got an outside appraiser, which he did not do.

Mr. LYONS. In many instances, as I say, we would have to get an outside appraiser. There was no reason for me to suspect any of these people during that first year or 18 months——

Mr. CRAMER. Let's take it since this information now became public.

Mr. LYONS. Yes.

Mr. CRAMER. Since you have been informed that there are problems. What has been done to keep from having to use these appraisers?

Mr. LYONS. Well, I think that the attorney general is in wholehearted accord with the attempts of the bureau and the department.

Mr. CRAMER. What has the attorney general done?

Mr. LYONS. Well, I think, to answer the question, that the bureau's new regulations, No. 1, that every fee appraisal must be reviewed by the review appraisal section of the department—every fee appraisal must be sent at least—at least a copy of it must be sent directly, as I understand it, to the bureau itself the minute it is submitted to the department.

That review appraisal secretaries now put a figure on the case, and the figure that the review appraiser puts on that case is the top dollar the review board can authorize in that case unless they give reasons in writing why they exceeded the review appraiser's recommendation.

I think that is definitely a step in the right direction. I think it

is definitely a step in tightening up the controls that possibly, over the period of years, might have been lax, and the attorney general's office is in complete agreement with these steps.

This is not our department, Congressman. We are simply the trial attorneys for the principal, namely, the department of public works or, as Mr. Rosenblatt said, the department of natural resources.

Mr. CRAMER. Well, I realize that, but there must be some solution from your standpoint, having to go to trial with these incompetent appraisals, as the evidence that you have to use.

Now, there must be some remedy to the taxpayer. There must be some remedy whereby you can get competent appraisers that you have to use as witnesses. What do you think is the remedy?

Mr. LYONS. Well, I think this, that in any case now—I will answer it this way.

No. 1, the attorney general has notified the department of public works that in any case in which a man's name appears who—his name has been publicly bandied around or is now presently under indictment or stands convicted, that those cases should not be settled by the department of public works.

And in all of those cases, where these men have appeared as appraisers, whether they be one or two, it is the recommendation of the attorney general to the commission that the department at this time attempt to secure another fee appraisal just as a check on the appraisals that these men had done in the past for the department.

And a good, dangerous example of that, Congressman, is that recently I had occasion to assign a very reputable firm in Boston to do an appraisal, and the case was being reached for trial in which the two appraisers for the Commonwealth are presently under indictment.

I forwarded the appraisals, as is my custom, to the review board when the case came in, and I talked to the review board after it was submitted to them, and the review board said that they had a problem in the case.

It came in not substantially under the other two appraisals but percentage-wise it was substantial. Moneywise it wasn't. The suggestion was made by the review board possibly that if they reduced the figure in this particular case they might be pointing a finger at these two men who have not yet been proved guilty. The suggestion was to leave the case exactly where it was with the present review board figure on it, but not to let the attorney general's office put into evidence anything in excess of the new appraisal that I had just secured.

I pointed out to the review board the danger of that situation, that tomorrow morning in a lobby conference, if the assistant assigned to try that case went in and offered the new appraisal to the lawyer, the lawyer on the other side could well answer, "Gentlemen, I was offered \$20,000 more by the department last month."

Then I would assume that he might figure that possibly some attempts had been made to remedy the situation, and he could walk down to the department of public works tomorrow morning and pick up the review board figures in that case or whatever figure has been offered to him today.

The commission has offered to pay up to the review board figure. So, for that reason, the attorney general's office has advised the depart-

ment that they should not settle any cases in which these people have appeared as State witnesses or State appraisers.

Mr. CRAMER. Now, how much experience did you have in condemnation before you were put in charge of this department?

Mr. LYONS. I had handled approximately 11 or 12 land damage cases. Mr. McCormack asked me the same question, Congressman, before I took the job. And I would say, having seen the practice in the State, having been exposed to it for 3 years and some months now, that the majority of land damage cases, the larger ones particularly, were handled by a relatively few attorneys, because it was known to be a specialty in the profession. I think Mr. Rosenblatt might agree on that.

The average lawyer, from my experience, might get three, four land damage cases, but that would be on the outside. And that is over a period now, as I say, of 3 or 4 years.

I have had many an attorney who has come in and explained, even though he may be a man further along at the bar than I am, not to take advantage of him; that this happens to be his first condemnation case that he had received.

Mr. CRAMER. How do you think we can keep these political hackers and fraudulent appraisers, keep them from doing business for the State? How can it be done?

Mr. LYONS. Well, Mr. Rosenblatt said as an aside here, as a reason or gave a reason. I think this, certainly if the qualifications that are originally submitted by the men are checked out and proved to be true, that would be a No. 1 step in the right direction.

Commissioner Ricciardi recently has submitted to the Bureau of Roads a list of fee appraisers that he plans to use at a department level in the future.

Those appraisers—those appraisers' names were submitted to the Bureau and a copy sent to us.

Mr. CRAMER. Where did it come from?

Mr. LYONS. The list came from the commissioners' office, I believe.

Mr. CRAMER. It came from patronage like the others, I suppose. We have had testimony to that effect.

Mr. LYONS. I do not know. The Bureau, in turn, asked me if I would comment on the names of the appraiser's who appeared on that list.

The attorney general's office then wrote to each one of the assistant attorneys general, handling land damage cases in Massachusetts last summer, and asked them to confidentially make a report back to us as to the qualifications that they had observed or thought about a certain individual, his ability as a witness, if the case goes on trial, and that the same would be held in confidence.

And I, in turn, have forwarded those to the Bureau of Roads. In other words, our thinking on whether or not X, Y, and Z will appear on this list, in our opinion, will make good witnesses in the event we have to try these cases. We have also—

Mr. CRAMER. Has he turned any of them down that you know of?

Mr. LYONS. I don't think on this list, Congressman—my best recollection is that not any of them were turned down.

There were comments made to the effect, using a slang expression, "just so-so"; there are better people in the area, but nothing about their morality or anything else.

I may also add, in this regard, that we have had occasion on at least two occasions, where we have notified the department of public works, that certain individuals should not be retained in the future because of their inexperience or their complete inability to act as the qualified expert on the stand.

And there were three names that were submitted from the Worcester area to the department of public works.

Mr. CRAMER. Well, you admit, do you not, the system that has been followed is pretty bad and needs correction?

Mr. LYONS. Congressman, if the system, as has been exposed here by the hearings, that this committee has so excellently handled so far, is an indication of the way the system is throughout, I would certainly have to agree with you that it is—

Mr. CRAMER. What do you mean "if"? Are you not satisfied that—

Mr. LYONS. No, no, Congressman. The exposures that have been made today, if this is a general picture of the department conditions, then I agree with you that there certainly is a need for correction.

I have told that to the committee. I have written to them on behalf of Mr. McCormack that we feel that the work that they are doing, and will do, that nothing but good will result from this hearing.

Mr. CRAMER. Do you not think that equal good can result from some other areas up in Massachusetts as well as these activities are concerned?

Mr. BLATNIK. Let's not get into other areas. There are many areas in the whole country.

Mr. CRAMER. Here is an expert on the subject.

Mr. SCHWENGEL. This is his job. I see nothing wrong with the question.

Mr. BLATNIK. Are you an expert witness on these other areas?

Mr. LYONS. I don't believe I could hold myself out as an expert.

Mr. SCHWENGEL. Here is a witness that lives in Massachusetts, and he has got a very important, responsible, and an able man.

There have been some stories in your newspapers there about things that have gone wrong. I am sure that the attorney general's department knows about this, and, based upon that information that has been revealed by some very reputable newspapers and reporters, do you not think maybe it might help for us to investigate the total picture and the fact that this area is as bad as it is, would it not be logical for us then to follow through and investigate and clear up all of the mess or investigate the entire picture wherever the wrongdoing may be?

Mr. LYONS. Well, if I understand the purpose of this subcommittee, it is to investigate—I think you used the word this morning—categories in the land acquisition of the public highway system. And it is also my understanding that you have gone into one category in Florida—

Mr. CRAMER. Two. And there was no hesitancy in Florida to go into two separate categories in Florida, I might point out. And this committee does not operate by legislative authorization on a category basis. We have a duty to go in and investigate it wherever we find it necessary and in Florida we went in to two categories and right-fully so.

Mr. LYONS. It is my information that the right-of-way has been investigated—

Mr. BLATNIK. Let me interrupt. The question is unfair. The witnesses will not tell us where to go and where not to go. May the record show that in every respect the attorney general and the witness specifically here has given us every cooperation we have asked for.

Mr. CRAMER. Nobody has questioned that.

Mr. SCHWENGEL. I haven't questioned that.

Mr. BLATNIK. When we talk about areas in which to go it is out of order here and it is in order in executive session.

Mr. SCHWENGEL. Well, Mr. Chairman, here is an article. Your picture is right there.

Mr. BLATNIK. I did not put it in there.

Mr. SCHWENGEL. It quotes the staff members. It says that half the country's State highway officials ought to be in jail.

Mr. BLATNIK. It is not quoting me.

Mr. SCHWENGEL. It is not quoting you, but this is in the report here, and it is quoting a member of the staff.

Mr. BLATNIK. Let's get back to this—

Mr. SCHWENGEL. And that is the reason I am here. I wish all the members of the committee were here and heard this testimony and would show an interest in it.

Mr. BLATNIK. After hearing all of these diatribes I do not blame the members from leaving. The chairman feels like leaving too.

Mr. SCHWENGEL. I resent that, Mr. Chairman. This is no diatribe.

Mr. BLATNIK. Let's—

Mr. MAY. I think, through Mr. Rosenblatt and through Mr. Lyons, we have received a clear picture of the problems that existed in the attorney general's office throughout the years as far as acquisition of rights-of-way is concerned.

Just one other item: Mr. Rosenblatt, did it become known to the attorneys representing landowners that if they took the case to the attorney general's office, instead of accepting the settlement offered by the department, that the landowner wouldn't lose a great deal?

Mr. ROSENBLATT. Well, any lawyer that was worthy of the title of "lawyer" would know that for the simple reason that it was the practice, and I thought it was a shabby way of practicing, too, of where they would give a person a lump sum settlement—I don't know whether they do it today—but, anyway, when I came in they would give them a lump-sum settlement and say, "That's all you're going to get on the case," when the law specifically states that they shall, in writing, make an award or an offer of an award which shall include damages, interest, and court costs.

And since 1953 the law has been amended and a proportion of the taxes. So any lawyer, who knows what the law of eminent domain is, knows that the only figure that the Board of Review can fix is the element of damage because the Board of Review cannot determine the amount of interest that a case is going to carry, because they don't know when that case is going to be disposed of.

So that if that case—let's say there is a case worth \$20,000, and it runs a year and a half or 2 years, well, that case is already worth 10—between 6 and 8 percent interest on that \$20,000, but the Board of Review figure will only show \$20,000.

So a lawyer, if he is worth the name of "court lawyer" would know that even if they lived up to the Board of Review figure, that the Board of Review figure, in and of itself, does not include the interest as of the time that the offer is made.

So, of course, they would come to the attorney general's office.

Mr. LYONS. May I point this out? That possibly, because of the slow offers initially or late offers there has been some evidence in one county in Massachusetts that they are a year or better behind in even getting an appraiser over there to do the work; that the volume in our office has increased so much that in one month I think—and it is the present month—we have just under 300 petitions that were brought against us in this one month.

Now, if that was ever projected into the—for the rest of the year, we could have well over 3,000 cases started against us. The volume has been increasing tremendously.

Mr. MAY. That is a disgraceful situation, because these land-owners, according to the law, must file a petition to protect themselves. Is that right?

Mr. LYONS. They must. If the year has run they are forever barred from bringing suit, and they must do as well as they can with the department.

Mr. MAY. Well, it appears that the attorney general is getting a volume that should never have been reached.

Mr. LYONS. Our volume increased 50 percent over 1961. There were 803 cases brought in 1956. And in 1962 today there have been 557 cases brought in, and I think that is something that the committee should certainly consider.

I think that the department should—oh, one further thing: and this, I think, is of most importance, and Mr. McCormack has some very definite views on this.

Mr. CRAMER. What have you done to get additional personnel?

Mr. LYONS. We have received two new legal assistants. I think we have received another assistant attorney general in the last 3 months.

I believe we have nine now trying cases, Mr. Cramer, but I was going to say that the Bureau, in its recent directive, has indicated to the Commonwealth and possibly to all the other States that an attempt should be made to rely on what is known as this staff appraiser, and they have indicated that the Commonwealth should try to do it up to \$25,000.

And in the event that the case does not settle out, where the property owner then at that time—it might—it gives them time to get a fee appraiser.

Now, if our experience, in the past few months is going to continue in Massachusetts, where we find that no appraisals are conducted for the first 9 months or 10 months in certain areas, that the property could well lead out by the time that fee appraiser is eventually assigned to the case, it leaves the attorney general's office with no expert witness to try the case.

It is the hope, and I am sure that this is well founded, that the Commonwealth can do this in a period of approximately 90 days from the date of the taking, so that if after 90 days the staff appraiser will not settle the case out, at that point they are to get a fee appraiser.

But I think it is something that we have to keep our eye on. And if the experience in the future is going to be the same that has been over the past year the department of the attorney general, and the Commonwealth and the Bureau of Public Roads and the Federal Government, is going to suffer greatly if we find ourselves defenseless in subsequent trials.

Mr. MAY. Thank you very much, Mr. Lyons, and Mr. Rosenblatt.

Mr. BLATNIK. Thank you, Mr. Lyons, and Mr. Rosenblatt. We appreciate your frankness and straightforwardness, and the preciseness with which you outlined the situation as you found it.

Mr. LYONS. I appreciate the opportunity to come before the committee, Mr. Chairman.

Mr. ROSENBLATT. That is right. I wish to thank this committee for your pointed questions. I think they really point out a situation which should be corrected, and I know they will once this thing has been brought out in the open.

Mr. BLATNIK. The hearing for today is adjourned until tomorrow morning at 10 o'clock in the morning.

(Whereupon, at 6:50 p.m., the hearing was recessed, to reconvene at 10 a.m., Wednesday, February 21, 1962.)

APPENDIX

EXHIBIT 1-A

[From report to the Congress by the Comptroller General of the United States, December 1959—Pennsylvania, Maryland, and West Virginia]

PROBLEMS IN ACQUISITION OF RIGHTS-OF-WAY

RESTRICTIVE FEATURES OF STATE RIGHT-OF-WAY LAWS

Certain statutory limitations and restrictions in the laws of Pennsylvania, Maryland, and West Virginia have the effect of substantially increasing the cost of rights-of-way obtained for highway purposes and may cause delays in carrying out the Federal-aid highway program. While many of these restrictive features of State right-of-way laws have existed for some time, they have become much more significant as a consequence of expansion of the Federal-aid highway program and the need for expeditious completion of the National System of Interstate and Defense Highways (Interstate System).

We have not made a complete analysis of the right-of-way statutes of the States visited, and we have no knowledge of whether the particular problems observed, as summarized in this report, are typical of the problems encountered in other States. However, with the increase in the Federal share of the cost of the Interstate System to 90 percent, by the Federal-Aid Highway Act of 1956 (70 Stat. 379), we believe that it is essential that the Bureau vigorously pursue a policy of encouraging all States to make such revisions of their statutes as will promote increased efficiency and economy in the acquisition of rights-of-way. The Bureau advises that it has actively participated in numerous studies of States' highway legislation and that it will continue to encourage officials of State highway departments to request State legislatures to make changes in State legislation that are desirable to highway interests.

Pennsylvania

The Automotive Safety Foundation (ASF), in its report (August 1958) on State highway policies and practices in Pennsylvania, cited various deficiencies and omissions in the department of highways' authority and procedures in acquiring rights-of-way.

The matters cited included lack of authority: (1) To acquire rights-of-way in fee simple; (2) to acquire rights-of-way by purchase, gift, or devise; (3) to provide for the acquisition of marginal or excess land; and (4) to sell or exchange properties. Because of these shortcomings in State legislation, it is not economically feasible for the highway department to carry out an effective program of advance right-of-way planning and acquisition, with its many and significant economic and social benefits. Also, requirements and limitations in present State statutes handicap the highway department in such matters as width of highways, slope easements, and providing for county approval of right-of-way acquisitions for State highways. All of these deficiencies and omissions in the State's laws serve to either increase highway costs or to create obstacles to efficient highway planning and construction.

Pertinent information from the ASF report is incorporated with our own observations in the following comments.

Lack of authority to acquire land in fee-simple title.—While most States grant their highway departments authority to acquire property in fee simple or in a lesser estate, as circumstances require, the Pennsylvania Department of Highways may acquire a right-of-way easement only. An exception to this is that fee-simple title may be acquired where necessary for relocation of utilities affected by highway construction, if the affected utility had a fee-simple title prior to the State's condemnation.

As a result of this lack of authority to acquire fee-simple title, land taken under an easement in Pennsylvania reverts back to the original owner when it is no longer needed for highway purposes or if the alignment of the highway is shifted for any reason. The price paid for the easement, which in most cases is equivalent to the cost of a fee-simple title, is completely lost. If the State had authority to acquire full title, the financial investment would not be forfeited and the State would be in a position to sell or exchange the land and recover at least part of the acquisition cost. Also, if the State could obtain fee-simple title to particular highway rights-of-way in advance of actual need, this authority would prevent property owners from building expensive improvements thereon which would later have to be purchased by the State at fair market value. The more important advantages to be gained by a program of advance right-of-way planning and acquisition are cited in the ASF report as follows:

"1. Right-of-way costs will be minimized by forestalling development of land ultimately required for highway purposes.

"2. Orderly development of communities will be facilitated.

"3. Private developers and property owners will be enabled to plan the use and development of their properties in a manner consistent with the projected highway plan.

"4. Right-of-way may be acquired more economically when pressure of construction deadlines do not have to be met and adequate time is permitted for negotiation."

It is obviously essential to a program of advance right-of-way planning and acquisition for a State highway department to have the authority to obtain a fee-simple title.

Under present Pennsylvania law, if it became necessary to shift the right-of-way line at some later date for engineering or other reasons, all right-of-way easements previously acquired would revert to the former owners, all payments received from the Federal Government would be reimbursed to the Government from State funds, and the State would stand to bear the full loss occasioned by the realignment of the right-of-way line. Under these circumstances, advance right-of-way acquisition and planning are both impractical and risky.

As pointed out in the ASF report:

"Regardless of the competency and care which may characterize a program of acquiring necessary lands for highway purposes and the engineering planning that precedes it, many factors are always present which may require a subsequent realignment of a future highway route, or its complete abandonment. Shift in population and land uses and other considerations can alter the best laid highway plans. It therefore is important that the highway department have legal authority to either exchange present rights-of-way for other rights-of-way or to otherwise dispose of the property no longer needed if the public interest is to be served."

The ASF report points out further that "considerable savings can also be made by the purchase of additional marginal lands contiguous to the highway but outside the right-of-way itself." These savings, however, would accrue primarily to the State, since Federal-aid funds cannot be expended for any lands outside the necessary highway rights-of-way.

Maryland's right-of-way statutes and procedures provide a sharp contrast to those in effect in Pennsylvania. Advance right-of-way planning and acquisition are carried on quite extensively in Maryland, and effective steps are taken to prevent expensive improvements from being constructed in the future right-of-way area. County officials in Maryland are furnished with maps showing the general location of highway to be constructed on new locations including the Interstate System and those that are to be reconstructed on existing locations. The most recent maps are included in the State's highway construction program covering the 15-year period which began in 1958. Copies of this program are available to the general public.

The State road commission of Maryland has requested those counties having zoning laws to refuse building permits for improvements to be constructed on the right-of-way line of the proposed highways shown on the maps and to notify the State road commission's right-of-way division of each such refusal. Also, the State's district engineers have been issued instructions to notify the right-of-way division of any improvements being made in prospective highway right-of-way areas in counties that do not have zoning laws. The property owner is contacted by the State road commission right-of-way engineer who attempts to persuade the property owner not to build on the right-of-way line. If the owner

refuses to comply with the request, the State condemns and acquires fee-simple title to the property.

During our review of the right-of-way acquisition procedures of the State of Maryland, we were informed by a State highway department official of one instance where the State saved approximately \$1 million by reason of the prompt action taken to prevent further construction of houses on the location of a future expressway. In addition, the right-of-way costs would have been increased by reason of required utility adjustments and additional improvements which would have been made by property owners.

In view of the large volume of building activity presently involved in and around urban areas, it appears to be imperative from a practical and economical standpoint that the Bureau encourage all States to determine as early as possible the future locations of the various road systems, particularly the Interstate System, and adopt such procedures as are necessary to prevent improvements from being constructed thereon.

Lack of authority to acquire rights-of-way by purchase, gift, or devise.—Pennsylvania's present statute does not appear to give the highway department specific authority to acquire necessary rights-of-way by purchase, gift, or devise. As a result, the department acquires all property for highway purposes by condemnation which adversely affects advance planning and may increase costs. We believe that maximum efficiency and economy in right-of-way acquisition can best be attained when State laws and procedures permit flexibility in the choice of the best method of right-of-way acquisition. In this connection, statistics prepared by the Maryland State Roads Commission indicate that court awards in right-of-way condemnation cases average about 50 percent above the highest appraisal amounts. High court awards have occurred also in West Virginia and Pennsylvania. Furthermore, since condemnation can be instituted only against specific parcels of property, the precise routes must be designated and the detailed plans of construction must be prepared thereby precluding advance acquisition of rights-of-way.

We do not believe that any one procedure, such as condemnation, is suitable to meet all needs and circumstances in a particular State. State land acquisition policies should facilitate acquisition at a minimum total cost with the maximum speed practicable. Therefore State procedures should be designed to require acquisition by negotiation where such practice is deemed desirable. The ASF report indicates that experience shows it to be more economical, less time consuming, and far more satisfactory from a public relations standpoint to acquire private property by negotiation and sale, when possible, instead of forcibly taking land through condemnation.

Statutory restriction on highway width.—The Pennsylvania Department of Highways is further handicapped by limitations in present statutes concerning permissible highway widths and slope easements. The present statutes provide that a road shall not be less than 33 feet nor more than 120 feet wide, except that, whenever the rights-of-way for a public highway have been acquired solely by the Federal Government, the maximum width may be 200 feet. For multiple-lane highways, the maximum width is 120 feet, plus any additional footage necessary in the judgment of the State's secretary of highways for center or dividing strips between the multiple roadways and for slopes in cuts and fills.

This restriction in the law requires the State to design highways within the widths provided by statute rather than to meet the requirements of the terrain or other engineering factors. Pennsylvania's statutory limitations on highway width appear to be somewhat inconsistent with the approved geometric design standards for the Interstate System and at variance with the design practices of other States.

The ASF report points out that "Since the design of highways is a technical matter, the width, as well as the necessary slopes for cuts and fills, should be determined by engineering rather than legislative policy * * *." The report further states that "Many of the States have repealed their statutes governing highway widths and have left such decisions to the design engineer." It seems open to question whether the Pennsylvania standards for widths of rights-of-way facilitate "uniform application of design standards throughout the States"—the objective contemplated for design of the Interstate System in section 108 (i) of the Federal-Aid Highway Act of 1956.

Maryland

Possible delay in removing improvements within the right-of-way area.—In Maryland, property owners may dispute the State's determination of fair market value for improvements and retain such improvements intact pending a determination of the value thereof by the court. This procedure could result in serious delays in highway construction since court action cannot always be obtained promptly. Also, if either the State or the property owner chooses to appeal the court's determination of fair value, even greater delays may be experienced.

West Virginia

Limited title and lack of advance planning.—The statutes of West Virginia permit the State road commission to acquire a fee-simple title to highway rights-of-way by negotiated deed, but the commission is limited to an easement in the event of acquisition by condemnation. It appears that this restriction in the law may cause problems in West Virginia right-of-way acquisitions similar to those discussed previously concerning Pennsylvania. Also, we were advised by State officials that West Virginia has no advance right-of-way acquisition program for future highway construction and has not established a cooperative relationship between the various counties and the State road commission to prevent improvements from being constructed on future locations. Regional office officials advised us that West Virginia has neither the funds nor the legislation to carry out an advance right-of-way acquisition program.

INADEQUATELY SUPPORTED WEST VIRGINIA RIGHT-OF-WAY CLAIMS PAID BY THE BUREAU

The West Virginia State Road Commission has claimed and received from the Bureau about \$956,000 in Federal-aid progress payments for numerous right-of-way acquisitions dating back to as early as 1950. These acquisitions had not been audited by the Bureau, and, based on our review of State records, many of the transactions do not appear to be adequately supported by the State. Prior to June 1, 1957, Bureau procedures did not require that progress payments to the States for right-of-way acquisitions be audited. Audits were made upon submission of the final voucher by the State.

In our report to the Commissioner of Public Roads on review of activities of region 2 in 1955 (transmitted July 22, 1955, we called attention to the backlog of unsubmitted final right-of-way vouchers in West Virginia. As a result of a subsequent examination of two Federal-aid highway projects in West Virginia, we advised the then deputy commissioner, by letter dated August 15, 1955, that the supporting documentation for right-of-way acquisitions was inadequate. In his reply of October 11, 1955, the deputy commissioner assured us that the State had appropriate documentation on file and he indicated that no corrective action was necessary.

Our more recent review in West Virginia disclosed that the situation had further deteriorated and no corrective action had been taken by the Bureau. By letter dated October 14, 1958, we transmitted to the regional engineer a detailed listing of the particulars of our findings in reviewing the State's records that supports the rights-of-way acquired for certain projects. We recommended that an audit be undertaken promptly by the Bureau of all the right-of-way transactions involved in these projects and that the matters disclosed by our review be considered by the Bureau in any settlement made with the State. We have been advised by the Bureau's Washington office that an audit has been completed and that due consideration has been given to the information called to the attention of the regional engineer and also that questions still to be resolved with the State are being vigorously pursued by the regional and division engineers of the Bureau.

The matters brought to the attention of the regional engineer are summarized below:

- (1) Appraisals lack essential information concerning the methods used to arrive at the fair value of the property and damages to adjoining properties. Also, many appraisals were neither signed nor dated. The regional engineer advised that deficiencies in appraisal processes will be included in the Bureau's audit report and inadequately supported transactions will be cited for disallowance.

- (2) Property not needed for highway purposes was acquired by the State, and the cost thereof has been billed by the State and paid by the Bureau. The value of the excess takings will be cited for disallowance in the Bureau's audit.

(3) Certain properties were acquired by the State before the Bureau had approved the programming of the particular projects. The cost of these properties has been included in the progress payments made by the Bureau. The Federal-aid regulations expressly prohibit Federal participation in the cost of rights-of-way acquired by a State prior to the date of approval of the Federal-aid program of which such costs are a part. The region intends to disallow the value of the parcels acquired prior to the date of program approval.

(4) Settlements were made with property owners in certain instances in excess of the appraisal amounts with no explanation as to how the excess amounts were justified. The region will cite settlements in excess of appraised values in its audit report.

(5) The Bureau had obtained no information on the State's procedures and controls relating to revenue collections on properties acquired which have been rented or leased. The Federal Government is entitled to receive proportionate credit for any revenues collected. The regional engineer has advised us that appropriate credits have been developed and will appear in the final settlement with the State.

CONSTRUCTIVE ACQUISITION OF RIGHTS-OF-WAY IN MARYLAND WITHOUT BUREAU APPROVAL

Constructive acquisition of rights-of-way has been accomplished by the Maryland State Road Commission in certain instances before program approval of the Federal-aid project by the Bureau. Such acquisitions have accrued where the State has performed all the essential procedures associated with right-of-way acquisition, including appraisal and negotiation with property owners, without obtaining actual title to the particular properties. Eligibility of the cost of such rights-of-way for Federal participation was approved by the Bureau, however, by reason of the fact that title to realty, under Maryland law, had not passed. Under Maryland law, title does not pass until the deed to property is recorded or, in condemnation cases, until the inquisition of the jury and tendering of the amount of the award.

The prohibition of Federal participation in the cost of rights-of-way acquired by a State prior to the Bureau's approval of the particular highway program of which the rights-of-way are a part derives from section 1.11 of the Federal-aid regulations. It would appear that the principal purpose of this restriction is to provide for active Bureau participation and review of all phases of State right-of-way acquisitions. This purpose is defeated, we believe, where all the essential acquisition procedures are carried out by the State before the State programs the project for Federal-aid. The Bureau would not ordinarily review State actions as they take place without assurance that the State proposes to request Federal participation in the cost of a project.

We recommend that the Bureau establish a particular time, consistent among all States, at which constructive title to property may be considered to have passed to the State in relation to the date of Bureau program approval. Regional office officials agreed that clarification of the point in time at which constructive title passes to States, for application of Bureau regulations, would eliminate problems in determining the eligibility of right-of-way costs.

In its comments on this report, the Bureau stated that:

"* * * the date of passing title does not itself control the question of the time of incurring costs for purposes of Federal reimbursement. Rather, the date on which the State either pays or obligates itself to pay is controlling."

This interpretation of the Bureau's regulations satisfactorily meets the intent of our recommendation but has not been promulgated as a Bureau-wide operating procedure. Right-of-way transactions entered into by Maryland indicate that the State was obligated to pay for the rights-of-way, in some instances, but the Bureau's decision on the eligibility of the costs for Federal participation was based on the fact that title to the rights-of-way had not passed.

Recommendations—To enable the Bureau to effectively review State right-of-way acquisitions and to promote consistency in the application of the regulations governing eligibility of right-of-way costs, we recommend that the Administrator establish as an operating procedure, for Bureau-wide application, the controlling factors to be considered in determining the date at which right-of-way costs become eligible for Federal participation. We recommend also that the questionable right-of-way acquisitions in Maryland be reviewed in the light of these controlling factors.

OTHER OBSERVATIONS CONCERNING STATE AND BUREAU RIGHT-OF-WAY PRACTICES

During our review of State and Bureau right-of-way policies and procedures, a number of other matters were observed that we brought to the attention of the regional engineer. In each instance corrective action has been initiated by the State or the Bureau's regional engineer.

Maryland

(1) Maryland State appraisers generally assign an arbitrary 10 percent value to takings of excess rights-of-way that are landlocked (without access), for purposes of settling with the Bureau. Similar takings, when appraised by commercial appraisers, were assigned values of between 14 and 25 percent based on appraisal formulas. We believe that all rights-of-way should be appraised by use of approved appraisal methods. The regional engineer has advised the Maryland division office that assignment of arbitrary values to any taking is an improper procedure and that this matter should be reviewed and appropriate corrective action should be taken. Officials of the Bureau's Washington office have informed us that the practice of assigning arbitrary values to excess takings of rights-of-way has almost disappeared in Maryland.

(2) Commercial appraisers employed by the Maryland State Road Commission had not, in all cases, adequately documented their appraisal reports. Prior to completion of our work in Maryland, however, we were informed by the State that an appraisal report form had been designed for use by commercial appraisers that would require adequate documentary evidence of the basis for arriving at the appraisal amount.

(3) The Bureau has participated in the cost of a number of right-of-way remnants of nominal value in Maryland which have not been included in the right-of-way area and for which no credit settlement has been made with the State. We believe that an appraised value should be placed on these remnants for purposes of settlement with the State or they should be included in the rights-of-way of the Federal-aid highway projects. The regional engineer agreed to have this matter resolved with the State by the Bureau's division office in Maryland. We have been advised that the Bureau's division office in Maryland. We have been advised that the Bureau has arranged for Maryland to credit the value of remnants on current billings for reimbursement of the Federal share of right-of-way costs.

Pennsylvania

(1) No attempt is made by the Pennsylvania Department of Highways to sell improvements, located within the right-of-way area, back to the property owners at the time settlement for property is being negotiated. All improvements so obtained are disposed of at public sale. Experience in other States indicates that, where property owners have remaining usable land after a partial taking, better settlements can often be obtained at the time of negotiation by permitting the owners to retain the improvements and move them off the rights-of-way. We believe that savings could be realized in Pennsylvania by following a recognized practice of comparing the cost of taking improvements with the cost of moving them to the remainder land and negotiating for settlement on the latter basis where it is obviously more economical. The Bureau advises that the State's practice concerning taking of improvements has been made somewhat more flexible.

(2) Notations on certain appraisals supporting right-of-way claims in process in the Pennsylvania Department of Highways indicate that the "unwilling seller" factor was considered in making the appraisals. We believe that this is not an acceptable appraisal practice in right-of-way acquisitions for Federal-aid highways. The regional office has notified its Pennsylvania division office to take the matter up with the State and require discontinuance of the practice. We were advised that the practice has been stopped and appraisals bearing the notation will be reevaluated by the State and the Bureau.

(3) Real estate consultants employed by Pennsylvania to analyze State right-of-way appraisals and recommend amounts for settlement with property owners do not document the justification and basis for arriving at recommended settlements. The regional engineer indicated that the Bureau has been concerned with the effect that the consultants' work has on property values. We were advised that, in the future, consultants will be required to reconcile appraisals in arriving at the figure recommended for use in negotiation with property owners.

(4) Appraisal reports supporting certain right-of-way transactions, prepared by commercial appraisers employed by the Pennsylvania Department of Highways, were incomplete in some respects. Information was lacking as to the source of data used in determining the appraised value of some improvements. In one instance the value of a brick and concrete-block church was established by using the comparable sales approach, but the comparative sales data consisted of a brick garage and frame houses of varying sizes which were sold as much as 10 years prior to the taking of the church; no adjustments were made to this prior sales data and no other appraisal approach to value was indicated. Also, we observed that several appraisals of real property, based on a before-and-after approach, improperly included items of personal property. The Bureau's appraiser in Pennsylvania advised that this matter had been discussed with the State and in the future the value of personal property will not be considered in appraisals of real property.

West Virginia

(1) Certain appraisals did not include comparable sales data or the reasons for not using such data in developing appraisal amounts. Also, information was lacking as to the source of unit cost prices applied to cubic or square foot measurements of improvements that were appraised. The regional engineer advised us that current appraisal practices are being corrected to require more adequate support for the appraisal approach used.

(2) The files supporting documentation for right-of-way claims in West Virginia are not adequately systematized and undoubtedly make more difficult the Bureau's audit of rights-of-way. We were advised that the State has initiated action to establish an adequate filing system.

(3) Bureau regulations require that the States credit the cost of rights-of-way acquired for Federal-aid highways with any revenues derived from the rental, sale, or salvage of improvements acquired. Procedures for control over such revenues collected by the State of West Virginia had not been reviewed by the Bureau to determine whether Federal-aid projects are properly credited.

The initial record of revenues resulting from right-of-way acquisitions is made in State district offices. In past years the collections were deposited in the State treasury without establishing the appropriate amount of credit due Federal-aid highway projects, and at the time of our visit the Bureau had not taken any corrective action with respect to such collections. Current West Virginia procedures require that the collections be forwarded to the headquarters office in Charleston for credit to projects before deposit into the State treasury. The Bureau had not reviewed the State's current procedure for adequacy of control over current receipts. The Bureau's regional engineer advised us that appropriate credits have been established for completed projects and that a review of the State's current procedures regarding control of revenues would be made. The Bureau's Washington office advised us that the State's procedures have been reviewed by its project examination division and found to be unsatisfactory. Appropriate corrective action is being taken by the State.

EXHIBIT 1-B

[From report to the Congress by the Comptroller General of the United States, February 1960]

NEVADA AND ARIZONA

DEFICIENCIES IN THE ACQUISITION OF RIGHTS-OF-WAY

Significant deficiencies in the procedures followed and the documentation available in support of the States' acquisition of rights-of-way for Federal-aid highways existed in Nevada and Arizona. The particulars of these deficiencies and the corrective action initiated by Bureau field offices with respect to each matter are summarized below.

NEVADA

Our examination of documentation in the files of both Bureau and State highway department offices in Nevada concerning the acquisition of 40 parcels of rights-of-way on 10 Federal-aid projects indicates a need for more vigorous Bureau action to obtain considerable improvement in State acquisition policies and procedures and in the documentation in support of right-of-way transactions.

One or more of the deficiencies described below existed with respect to 29 of the 40 parcels reviewed. The Bureau had allowed Federal participation on 15 of these 29 parcels after review and audit by the Bureau's division and regional offices, but no questions of record had been raised at the time of audit concerning any of the following matters disclosed by our examination.

1. Appraisal reports for a number of parcels did not show the bases and methods used in determining values for land, improvements, and severance damages.

2. Where two or more appraisals were obtained, wide variations between appraisal values were not adequately explained in determining actual settlements with property owners.

3. Appraisals were sometimes made after acquisition had been negotiated with owners and the agreements of sale had been executed. Appraisals in these circumstances generally serve little purpose but to support agreed prices which may be in excess of appraised values at the time of the negotiations. The costs of these "after the fact" appraisals have been included on reimbursement vouchers for Federal participation.

4. Noncompensable items, such as personal property and loss of rent, were included in the acquisition price of particular right-of-way parcels. Also, internal controls over the sale or salvage of improvements were inadequate.

5. The State had not adopted adequate written policies, procedures, and reporting formats to facilitate satisfactory control over all phases of rights-of-way acquisition.

As early as May 1956, the Bureau recognized that the State's right-of-way operations were seriously deficient. A report on many of the above-listed matters was made by an engineer of the Bureau's San Francisco regional office. A subsequent survey of the State's appraisals and right-of-way operations in February 1958, by a Bureau appraiser from the Sacramento division office, indicated that there were still many of the same deficiencies in the State's right-of-way organization and operations. The survey report stated that settlements for parcels acquired varied from appraised values and that in many instances written explanations for these variations were not included in the files. A question and answer report, prepared by the State department of highways covering the State's right-of-way organization, procedures, and policies, revised as of May 1, 1958, contained the following statement:

"At present there are no specific regulations and procedural directives governing the operations of the right-of-way division. A compilation of a right-of-way manual, together with forms approved by legal counsel, has been commenced but due to lack of personnel and press of other matters, the same has not been completed."

Little progress had been made by the State in correcting what appeared to be a longstanding, generally inadequate, right-of-way operation. We do not believe that effective action was taken by the Bureau to expedite improvement of the State's practices. The establishment of minimum acceptable right-of-way acquisition procedures in the Nevada Highway Department appears to be long overdue. While the Bureau has no direct control over correcting the conditions that exist in Nevada, the Bureau may withhold Federal aid if right-of-way claims should not be accepted by the Bureau for Federal participation to the extent that they are not adequately supported.

The Bureau's regional engineer conceded that the State's appraisal reporting was inadequate but stated that it was in the process of being corrected. He advised that the State had been instructed that Federal reimbursement of right-of-way costs would not be made unless appraisal reports were complete and supported the amounts paid for rights-of-way. We have been subsequently advised by the Bureau that (1) the State's procedures have improved considerably as a result of realignment of the position of the right-of-way organization in the highway department, (2) the State's right-of-way manual has now been completed and reviewed, and (3) the deficiencies in the State's practices and procedures, as hereafter described, have been corrected as far as current and future transactions are concerned. We have been advised also that our findings with respect to specific parcels of rights-of-way, cited in the following sections of this report, which had not been audited by the Bureau at the time of our review, will be considered by the Bureau when the transactions are audited.

Lack of documentation to support the basis for arriving at settlement prices

In a number of instances we were unable to determine the State's basis for arriving at the settlement prices paid for particular right-of-way acquisitions.

1. Two appraisals were made of parcel No. 1 on project No. F-002-1-(5), one by a State-employed appraiser and the other by a contract appraiser. The State appraiser valued the property at \$10,716.50 in his appraisal report dated July 17, 1956, and the contract appraiser valued the property at \$17,824 in his appraisal report dated June 18, 1956. The property was purchased by the State on July 26, 1956, for \$14,608 and Federal participation was claimed and paid pursuant to a Bureau audit made shortly thereafter. There was nothing in the State's records, however, to indicate which appraisal, if either, was used as the basis for negotiation, and the Bureau auditor apparently did not question the State's claim. Also, there was no agreement of sale on file for this parcel and there was no record of negotiations in either the State or Bureau files.

The State right-of-way agent said that to his knowledge negotiations for the property were entirely verbal, and an agreement of sale was not necessary because the owner readily negotiated the deed. He stated further that the State's determination as to which appraisal was reasonable was also made verbally and the Bureau had never questioned the matter.

We discussed the particulars of this right-of-way acquisition with division office engineers and with the regional office field auditor responsible for auditing the State's claim to determine what review and evaluation the Bureau had made of the settlement price and of the appraisals supporting the claim. The division engineer informed us that a review of all the right-of-way acquisitions on this particular project had been made by the Bureau's area engineer but not being appraisers neither he nor the area engineer felt qualified to question the State's appraisal experts. He stated further that when the new position of Bureau appraiser is filled in the Nevada division office the situation will be under control. The regional office field auditor responsible for auditing this claim said that not being an appraiser he did not question appraisals and made no comparison of the appraisal amounts with the purchase price.

We were unable to determine at the time of our review how the Bureau satisfied itself as to the propriety of Federal participation in this right-of-way claim, since there was no documentation on file to support the basis for arriving at the compromise settlement and there had apparently been no Bureau evaluation made of the appraisal reports. We were advised by the Bureau that, subsequent to our review of this transaction, a Bureau appraiser made a verbal inquiry at the State on this transaction and, based on the information obtained, has stated that he is satisfied with the values established.

2. In the acquisition of parcel No. 3, project No. IN-001-1-(14), on April 26, 1957, the State settled with the owner for \$42,000, but State files pertaining to this taking disclosed that three appraisals had been obtained, as follows:

Appraisal report of June 20, 1956-----	\$25, 809
Appraisal report of April 26, 1957-----	22, 200
Appraisal report of May 22, 1957-----	38, 000

No appraisal report or other documentation could be found to explain the payment of \$42,000 for the property. Also we noted that the above appraisal of \$38,000 obtained from a contract appraiser was dated 1 month after the purchase date. The highest appraisal obtained prior to acquisition was \$25,809, or about \$16,000 less than the acquisition price. The Bureau's Sacramento division appraiser stated in his review comments on this transaction that settlement was made by the State on the recommendation of the State highway engineer and the State highway board. The State's claim for this transaction had not yet been submitted to the Bureau for reimbursement of the Federal share of the cost of the right-of-way. The Bureau informed us that in 1957 the State was advised that reimbursement could not be made for costs on this parcel on the basis of documentation then available.

3. Parcel No. 19, project No. F-009-1-(2), was acquired by the State on October 2, 1956, by negotiated settlement with the owner for \$25,000 as compared with three appraisals made of this property varying in amounts

from \$17,567 to \$25,000. No information or justification was on file in either the Bureau or the State offices showing the basis for the State's acceptance of the highest appraisal for purposes of negotiation. The claim for the Federal share of the cost of this taking was audited and paid by the Bureau with no apparent questions having been raised as to the support for the settlement price. We have been advised that the Bureau has verified the reasonableness of the State settlement with the property owner by making its own appraisal, using an approach to value that was entirely different than that utilized in the previous State appraisals.

4. In the acquisition of parcel No. 15, project No. F-009-1-(2), on November 13, 1956, the State settled with the owner for \$15,500. Three appraisals had been made of the property at values ranging from \$13,000 to \$14,148. We noted, however, in our review of State and Bureau files that the State's negotiator had arbitrarily raised the settlement price by about \$1,400 over the highest appraisal obtained, and \$2,500 over the lowest appraisal obtained, based on his personal opinion as to the value of the property. This procedure was apparently not questioned by the Bureau in its initial audit of the State's claim. On reaudit of the claim, the Bureau accepted the negotiator's statement of personal opinion as justifying the settlement price. We were advised that the reasonableness of the settlement was later borne out by the results of condemnation proceedings on an adjoining parcel of property. The Bureau's area engineer had stated in his review comments on the State's settlement of this claim that "obviously a possible condemnation would have been more expensive than the minor difference in the settlement price." However, there was nothing on file at that time to indicate whether or not condemnation was ever considered by the State. We believe that payments in excess of appraisal valuations should be supported by more substantial justification than a statement of opinion by the negotiator which was the only supporting documentation available to the State and the Bureau at the time of settlement with the property owner and reimbursement by the Bureau.

It is important that the State of Nevada be apprised by the Bureau that appropriate documentation must be available in the State's right-of-way files citing all pertinent factors which have been considered in the determination of a price at which to negotiate with property owners. It is our view that such documentation is essential for adequate Bureau review and audit of right-of-way transactions.

Negotiations commenced before appraisal reports were prepared

Current Bureau policies expressly require that "Before negotiation or hearing in condemnation, the State highway department shall secure at least one appraisal of each parcel to be acquired or damaged * * *," and that "All such appraisals shall be reviewed by a supervisor in the State right-of-way division competent to approve right-of-way appraisals, prior to the start of negotiations or condemnation." This same provision was contained in prior Bureau instructions on right-of-way acquisitions. Amplifying instructions covering a previous Bureau policy statement on rights-of-way provided that "* * * appraisals should be made always before the property is disturbed by construction and before the landowner is approached in negotiations * * *."

Negotiations for the acquisition of highway rights-of-way in Nevada were commenced in certain instances before appraisal reports were prepared. Also, appraisals were sometimes made after the particular acquisition had been completed and the agreement of sale had been executed, in what appeared to be an attempt to support settlement prices which were in excess of appraisal amounts existing at the time of settlement. The cost of these after-the-fact appraisals was, in many instances, included in the State's claim for Federal participation.

1. Parcel No. 5 on project No. F-009-1-(2) was acquired by the State for \$125,000 on August 27, 1956, and Federal participation was claimed and received by the State shortly thereafter. Our review of the particulars of acquisition indicated that negotiations for the purchase of this property were in progress on June 15, 1956, or about 1 month prior to the date the first appraisal was made of the property. We were informed by the State's right-of-way agent that an initial offer of \$103,500 was made to the owners on June 15, 1956, and that this amount had been "pulled out of the air" in order to start negotiations. Subsequent appraisals were obtained by the State in the amounts of \$115,144 and \$130,609 respectively. The Bureau has

advised us that, based on information obtained from the chief appraiser of the State, in this particular taking, as well as for other takings on the same project, purchase of the property preceded preparation of formal appraisal reports but did not necessarily precede the preparation of all the individual appraisal reports comprising the formal appraisal report. The individual reports, we were informed, were unfortunately not dated.

2. The State commenced negotiations for parcel No. 4, project No. S-727 (1), about 2 months prior to the completion of a formal appraisal of the property. This parcel was acquired by the State on March 28, 1958, for \$8,760, but the State's claim for Federal-aid participation had not been submitted to the Bureau at the time of our visit.

The Bureau's area engineer stated that he gave approval to the State to proceed with negotiations on this parcel on December 5, 1957, based on rough notes of appraisals that he had examined. He said that the State had to negotiate to remove fish from a pond on the property and could not wait for the appraisal to be formally completed. The one appraisal report on this property, dated February 14, 1958, valued the property at \$7,700. We could find nothing on file which would justify Federal participation in the cost of this parcel in excess of the \$7,700 appraisal.

3. In the acquisition of parcel Nos. 12A and 12B, project No. IN-001-1-(15), on March 13, 1957, the State settled with the owner for \$52,000. Our review of the State's files on this acquisition disclosed that three appraisals were made of the property, two by State-employed appraisers and one by a contract appraiser, as follows:

Appraisal report of April 18, 1955-----	\$40, 243
Appraisal report of November 23, 1956-----	52, 000
Appraisal report of April 22, 1957-----	51, 984

The appraisal of April 22, 1957, was made about 5 weeks after the property had been acquired, apparently additional support for the price already paid. Also, in this and in other similar instances, the State apparently intends to claim as incidental costs or acquisition the costs attributable to obtaining post-acquisition appraisals.

The difference of \$12,000 between the two appraisals obtained prior to acquisition is not satisfactorily explained in the State's files and raises serious doubts as to which of the appraisals represents the more accurate valuation. Also, about \$4,800 of personal property was acquired by the State in this taking for which the State apparently intends to claim Federal participation. The Bureau's policies on rights-of-way specifically exclude the cost of items of personal property from Federal participation. The State's claim for the cost of this taking had not been submitted to the Bureau for Federal participation at the time of our review.

4. On parcel No. 16, project No. F-009-1-(2), the State settled with the property owner for \$38,900 on March 14, 1956. Two appraisals were made of the property. The first appraisal was made by a contract appraiser on November 1, 1955, at \$32,045. The second appraisal, in the amount of \$38,917, was made by a State appraiser as of May 1, 1956, or about 6 weeks after acquisition by the State had been accomplished. This latter appraisal was made pursuant to a request by the State highway engineer dated March 3, 1956, that an appraisal of the property be made. The appraisal report is dated May 25, 1956, with the value of \$38,917 established at May 1, 1956.

Negotiations for the purchase of this property were in process as of March 8, 1956, at a price of \$38,900, or \$6,855 over the value established by appraisal approximately 4 months prior. The State appraisal of \$38,917, made 6 weeks after acquisition, was apparently intended to justify the price already paid. This particular parcel was included in a State claim for Federal participation along with appraisal costs and was audited and paid by the Bureau with no apparent question as to propriety.

Based on the supporting documentation we were shown, we do not believe that full Federal-aid participation should have been paid on this taking by the Bureau for either the real property or the expense of appraisal. The settlement with the property owner at \$38,900 appears to have been made without either an appraisal which approached this amount or written justification for settlement at more than the then existing appraisal of \$32,045.

The Bureau has subsequently informed us that a representative of the State has verbally advised the Bureau that the data contained in the second

appraisal were available to the negotiator. The Bureau has further advised us that a right-of-way specialist for the Bureau has again reviewed this transaction and has satisfied himself that the price paid by the State is reasonable.

5. Parcel No. 18, project No. F-009-1-(2), was acquired by the State for \$24,300 on March 9, 1956. Two appraisals were made of the property; the first by a contract appraiser on November 1, 1955, at \$22,317, and the second appraisal at \$27,626 by a State appraiser as of May 1, 1956, or about 6 weeks after acquisition by the State had been accomplished. This parcel was included in a State claim for Federal participation along with appraisal costs, and the claim was audited and paid by the Bureau with no questions being raised concerning the basis for settlement in excess of the initial appraisal or payment for the cost of the subsequent appraisal. The Bureau's comments on this transaction were the same as those set forth above for parcel No. 16.

6. Parcel No. 1A, project No. S-551-(8), was purchased by the State for \$16,500 on March 28, 1957. One appraisal was made of the parcel prior to acquisition. This appraisal, dated March 1, 1957, assigned a value of \$16,308 to the entire parcel and \$8,467 to the partial-taking area required for the highway right-of-way. A second appraisal, dated April 4, 1957, in the amount of \$7,401 was obtained for the partial-taking area after acquisition of the property had been accomplished.

At the date of our visit, the State had not submitted a claim for this taking to the Bureau for reimbursement. When the claim is submitted, however, we believe that a careful scrutiny of the facts should be made in determining the costs eligible for Federal participation, considering that more right-of-way was taken than was apparently necessary and the second appraisal assigned a value to the partial-taking area which was \$1,000 less than the first appraisal.

We believe that the Bureau should refuse to pay State claims for Federal participation in the cost of rights-of-way in those instances where negotiations have been commenced prior to obtaining an acceptable appraisal report. Where the State chooses to commit itself to a settlement price in negotiation with property owners prior to obtaining an adequate appraisal attesting to the value of the property, such a commitment may well preclude the possibility of subsequently obtaining an objective and fair appraisal to support the transaction and the Bureau has no assurance that the negotiated settlement represents the fair value of the property acquired.

We do not believe that, as a general rule, much credence should be placed in State appraisal valuations made after acquisition has been accomplished and the Bureau ordinarily should not accept State claims for the cost of such after-the-fact appraisals for Federal participation. The Bureau should require State compliance with its policies for completion of all appraisal work prior to both negotiation and acquisition of rights-of-way.

The Bureau has advised us that, according to the chief appraiser for the State, in many cases appraisals were made prior to negotiations but were not dated as of the day they were actually prepared. In other instances documentation of appraisals already made was not considered adequate by the Bureau and the State was requested to obtain additional appraisals after the fact but, based on the time of the taking, to substantiate amounts paid and claimed for reimbursement; the claims supported by these retrospective appraisals were accepted only where reviews by Bureau appraisers established the reasonableness of the amounts claimed by the State. It is our view that (1) the Bureau should require that the record of State appraisals and negotiations clearly support the amounts claimed and procedures followed by the State on particular transactions, and (2) in all cases where after-the-fact appraisal reports are requested by the Bureau to support the amounts claimed by the State, Federal participation should not be allowed in the cost of the inadequate appraisal reports prepared initially.

Inadequate and incomplete appraisal reports

Appraisal reports supporting many of the right-of-way acquisitions reviewed were either inadequate or incomplete in that they did not show the bases, methods, or other information pertinent to determining values for land, improvements, severance damages and other items.

1. In the acquisition of parcels Nos. 4 and 5, project No. IN-001-5-(4), on November 16 and 18, 1955, 10 acres of land were acquired by the State along with certain improvements. Two appraisals were made of the taking

by contract appraisers, one for \$19,479.70 and the other for \$22,604.32. The property was acquired by the State for \$20,000. Significant deficiencies noted in reviewing the appraisals supporting this taking were:

(a) Neither appraisal includes pictures of above-ground improvements valued at about \$19,000.

(b) One appraisal was based on replacement cost, less depreciation, but there was nothing in support of the appraisal to show how replacement cost was computed.

(c) The second appraisal of the taking merely listed the property to be acquired and the appraiser's assigned valuation. The appraisal report did not indicate the basis for arriving at these values.

(d) Personal property valued at \$3,000 and \$2,650, respectively, was included in the two appraisals. Payments made for personal property should not be considered eligible for Federal participation.

(e) We could not determine whether consideration was given in either appraisal to payment of severance damages on the small part (1.288 acres) of the total taking that was required for the highway right-of-way in lieu of acquiring the entire 10-acre parcel. There was no information in either appraisal to indicate whether or not the owner had access to the property by another road or that the remainder property would be landlocked.

The State submitted a certificate of right-of-way costs and a voucher for Federal-aid participation to the Bureau on May 8, 1958, for the entire taking, including most of the personal property acquired. This claim had not been audited by the Bureau at the time of our review.

The Bureau has subsequently informed us that its analysis of this transaction reveals that the Government should not participate in the cost of the excess land and buildings or in the personal property items. A credit of \$3,000 offered by the State was accepted by the Bureau.

2. A review of pertinent files on parcel No. 36, project No. F-003-02-(5), disclosed that several appraisals were made of this parcel by the State, all of which appeared to be deficient in various respects. The parcel involved was an income-producing property, but the State's appraisals on which settlement for \$14,000 was based did not consider the use of the income or earnings appraisal method. A Bureau appraiser computed the value of the property by the income method of appraisal and approved the State's settlement because his resulting appraisal amount of \$13,500 approximated the amount on which the State had settled with the property owner.

Certain points were noted in reviewing the State's files on the acquisition of this parcel:

(a) The parcel was appraised on September 20, 1956, by a State employee who listed the following values in his appraisal report:

Land.....	\$2, 113
Improvements.....	9, 390
Loss of rent.....	2, 400
Total.....	\$13, 903

The loss of rent item was not a proper item for consideration in making this appraisal.

(b) Another State employee valued the property at \$2,110 for land and \$14,160 for the improvements in his appraisal report dated December 20, 1956. He stated that new land values were established by recent sales and that he had accepted the first-mentioned appraiser's values for damages to properties. The \$14,160 value for damages to property, however, is in excess of the first appraiser's entire appraisal amount. This same appraiser had valued the parcel at \$8,025 in an appraisal report dated September 1, 1956.

We have suggested to the Bureau that the varied and often inadequate information contained in appraisal reports indicates the need for Bureau policies to specify minimum standards for acceptable appraisal reporting. The Bureau has agreed to consider the issuance of guidelines setting out the minimum requirements for appraisal reports.

ARIZONA

Our review of 50 appraisal reports and other documents relating to the acquisition of 33 parcels of right-of-way by the Arizona State Highway Department disclosed deficiencies as follows:

1. In most of the right-of-way files reviewed there was no evidence that a prenegotiation review has been made by an appraisal supervisor or other responsible State official. Bureau policies on rights-of-way provide that "All * * * appraisals shall be reviewed by a supervisor in the State right-of-way division competent to approve right-of-way appraisals, prior to the start of negotiations of condemnation."

2. No indication was given on many of the appraisal reports as to the highest and best use to which the property was adaptable, the basis for determining land values, or the values for improvements.

3. Several of the appraisals included estimates of severance damages to remainder properties based on the appraisers' experience and judgment without a presentation or reference to factual evidence that a decline in the value of the remainder would result from severance of a part of the property. Bureau policies require that State claims for severance damages be adequately supported by appropriate appraisals.

4. Most of the right-of-way acquisition files reviewed did not indicate the name of the negotiator or the date of initial contact with the property owner. Bureau policies specifically state that "Federal participation will not be allowed in the cost of any parcel of land where the negotiations therefor were carried on by the same person who made the appraisal thereof." We believe that, in order to determine whether the appraisal and negotiation functions are properly separated, as required by the Bureau's regulations, it is essential that the particulars of the negotiation process be fully documented and recorded.

Appraisal reports of highway department staff and fee appraisers in Arizona were generally inadequate to permit a meaningful review and evaluation of the fairness of amounts stated as taking values of properties. Approval by the Bureau of the State's claims for participation in settlements based on these inadequate appraisal reports constituted a weakness in the Bureau's administration of the Federal-aid highway program. The issuance of guidelines setting forth minimum requirements for appraisal reports should improve the situation in the future.

Regarding the documentation of negotiations, the State's property acquisition records should as a minimum include such information as:

1. The name of the negotiator to whom the acquisition is assigned and the date of assignment.
2. The amount authorized to be offered and by whom authorized.
3. A record of each contact with the owner and results of each contact.

These records would not only furnish evidence of the State's adherence or nonadherence to acceptable procedures but would also furnish useful data when condemnation proceedings become necessary.

We believe that the Bureau should require the Arizona State Highway Department to maintain a complete record of all negotiations with property owners. The Bureau's Arizona division engineer advised that this matter would be taken up with State highway department officials.

In discussions of Arizona rights-of-way with the Bureau's regional engineer, we were advised that, if the State's procedures did not improve substantially and were not included in a manual of operations, he would consider recommending to the Administrator that Federal participation in Arizona right-of-way costs be suspended until such time as the State's procedure and records are considered adequate by the Bureau. We were subsequently advised by officials of the Washington office of the Bureau that State procedures have been steadily improving and that a manual of right-of-way operations has been completed and put into effect by the State.

The Bureau's Washington office has reviewed the manual and made certain suggestions for improvement which have been accepted by the State. We have been informed that State files contain the necessary documentation, approvals, and justifications to support current right-of-way transactions. All past acquisitions have been thoroughly checked by Bureau appraisers and auditors, according to the Bureau, and those transactions which did not fully meet Bureau requirements were not approved for payment.

EXHIBIT 1-C

[From report to the Congress by the Comptroller General of the United States, July 1960—
Arkansas and Louisiana]

FINDINGS AND RECOMMENDATIONS

PROBLEMS IN THE ACQUISITION OF HIGHWAY RIGHTS-OF-WAY

Arkansas

The State of Arkansas had acquired certain rights-of-way for Federal-aid highways under procedures which were not wholly acceptable to the Bureau for purposes of obtaining Federal-aid reimbursement. Long delay by the State in developing acceptable right-of-way acquisition procedures, brought about a difficult problem regarding the eligibility of certain of the State's right-of-way costs for Federal participation. In a previous report to the Commissioner of Public Roads, dated September 26, 1956, on our review of activities in region 6, we pointed out that apparently excessive payments were being made by the State of Arkansas for certain rights-of-way acquired through county courts.

During 1957 and 1958, Arkansas submitted to the Bureau for approval three different statements of policies and procedures to be followed in the acquisition of rights-of-way. Each of these statements was unacceptable to the Bureau, in part, but each statement represented some improvement over previous policies and procedures, including the relieving of county judges of any functions in acquiring rights-of-way on future Federal-aid highway projects. However, as of May 1958, State claims on about 40 projects involving Federal-aid highway right-of-way acquisitions had been submitted to the Bureau for reimbursement of the Federal pro rata share of costs of about \$1.3 million, but payments had been withheld on these projects because of questionable practices noted by Bureau auditors during their audit of several projects. Most of the rights-of-way represented by these claims were acquired by county courts. The Bureau's Project Examination Division investigated several of these right-of-way acquisitions and subsequently referred certain of the transactions to the Department of Justice for further investigation.

We have been advised by the Bureau that, with regard to the projects referred to the Department of Justice, there was a finding that there was no basis for a Federal action, but that the questions raised by the Project Examination Division have been referred to the Arkansas Highway Department with a request that the matters be turned over to the prosecuting attorneys of the counties involved. The Bureau stated that it does not intend to reimburse the State for the Federal share of the cost of rights-of-way on these projects until determinations have been made as to what prosecutive action, if any, will be taken. We were further informed that, except for the projects referred to the Arkansas Highway Department, region 6 was advised that it might proceed to perform its regular audit and pay to the State of Arkansas the amounts which could be supported as reasonable and proper under the laws of the State-and-Bureau operating procedures.

Louisiana

1. Appraisers for the State of Louisiana used only one appraisal approach in many instances to estimate the value of properties to be taken by the State. Right-of-way policies and procedures prescribed by the State of Louisiana specify the use of three approaches (market data, reproduction cost, and income capitalization) where applicable, in order that the conclusion drawn from each approach may be used as a check on the other approaches in arriving at a final estimate of value. Also, certain of the State's appraisal reports did not include all the data necessary to make an adequate review and evaluation of final determinations of value. We have been advised by the Bureau that Louisiana's present practices indicate a marked improvement over procedures followed in 1956 and 1957. Also, in January 1960 the Bureau issued general guidelines for the preparation of appraisal reports which should substantially improve the content of these reports in the future.

2. Many appraisal reports in Louisiana pertaining to properties of value greater than \$25,000 contained clear indications that the appraisers had collaborated in the preparation of their separate appraisal reports. It is our opinion that a certain amount of control is forfeited when appraisers collaborate in preparing their appraisal reports. We believe that the Government is thereby participating in the cost of two appraisals without receiving the full

benefits of two independently determined estimates of value. The Bureau's stated right-of-way policies formerly discouraged joint appraisal practices, but the revised policies are silent on this matter. The Bureau has advised us that the Louisiana Highway Department now requires separate and independent appraisals of all projects in which Federal participation in right-of-way costs is involved, and further that this requirement is set forth in the State's revised right-of-way procedures and is a noted condition of appraisal contracts.

3. For a particular right-of-way parcel on Louisiana project No. I-IN-520(1), the State had paid \$116,800, which included \$5,526 representing the value of a house that was located wholly outside the right-of-way line and was therefore not required in the taking. Also, the "agreements to sell" were negotiated with property owners on this project on the basis of appraisers' estimates submitted prior to review and approval of formal appraisal reports. The entire amount of \$116,800 was submitted to the Bureau for reimbursement in a State progress voucher. We were subsequently advised by the Bureau that the State's claim for reimbursement on this parcel was suspended pending a detailed audit and that an appropriate deduction was later made for the value of the property outside the right-of-way line. The Bureau stated further that the State does not now proceed with negotiations prior to review and approval of formal appraisal reports.

4. Incidental costs for title searches and court costs and credits applicable to the rental, sale, or salvage of right-of-way takings by the Louisiana Highway Department were not recorded and classified by the State in a manner which provided for the ready association thereof with the particular takings involved. In the absence of an appropriate record which identifies costs and credits with parcels of a project, it is difficult for the Bureau to properly audit payments to the State for right-of-way takings. Bureau officials agreed that the State's methods made it laborious for the Bureau to perform its audit but said that the State was satisfied with its accounting procedures. They advised us further that accounting for incidental costs had been discussed repeatedly with the State and that the Bureau would continue to work with the State in this matter.

EXHIBIT 1-D

[From report to the Congress by the Comptroller General of the United States, October 1960—Montana and Oregon]

LACK OF CONTROL OVER ACQUISITION OF RIGHTS-OF-WAY

Certain weaknesses existed in the procedures and practices followed by the States of Montana and Oregon in the acquisition of rights-of-way, which evidence a serious lack of control over such acquisitions by both the States and the Bureau. In Montana, appraisal reports were inadequate or incomplete in many respects, and negotiation limits based on appraisals had not been established by the State. In Oregon, there was insufficient justification for special considerations given to grantors in negotiations. Court awards in condemnation cases in both States were considerably higher than the appraisal valuations for the property acquired, and there were a number of other matters concerning State practices in the acquisition of rights-of-way or the Bureau's review procedures that we believe warrant additional consideration by the regional engineer or the Federal highway Administrator.

The Bureau has allowed Federal participation in a number of questionable transactions, after reviews and/or audits by the Bureau's divisional, regional, and Washington offices. In other instances, these Bureau offices had completed reviews and audits but final disposition had not been made of exceptions that had been taken. We believe that the matters described below indicate the need for the Bureau to obtain considerable improvement in State procedures and practices and in its own review and audit activities concerning the acquisition of rights-of-way for Federal-aid highways.

MONTANA

Inadequate and incomplete appraisal reports

Appraisal reports prepared by State or fee appraisers for right-of-way acquisitions in some instances were not complete or adequate to support the amounts paid to grantors. Of additional concern to us has been the rather high incidence of substantial differences in two or more appraisal reports, as indicated in the

examples cited below. Such wide differences in appraisal valuations raise a serious question as to the reliability and competence of one or more of the appraisers on each transaction.

1. Parcel 21 of project No. I-ING 90-8(5) was acquired by the State of Montana on July 2, 1958, for \$87,172. Two contract appraisers had valued the taking at \$56,902 and at \$96,512. The State's review appraiser valued the taking at \$69,435, by the before-and-after method, and at \$87,135 by an alternate computation method. Settlement was made with the owner for \$87,172, based on the alternate computation of the review appraiser.

The principal difference between the review appraiser's two appraisals was in the valuation placed on the land. In the "before and after" method the land was valued at \$1,500 an acre, while in the alternate computation the land was valued at \$7,500 an acre. We were informed by officials of the Bureau's division office that the value placed on the land in the alternate computation was based on acquisition at the rear acreage value rather than at the value of the front acreage actually taken, and that the method followed is required by the provisions of section 93-9913(9945) of the 1947 Montana Code.

Under the statute cited this excess valuation would appear to be justified only as severance damages to the remainder. The property owner, however, was compensated for severance damages in a separate amount designated in the settlement. Federal participation should ordinarily have been limited to the fair market value of the land actually taken plus the severance damages to the remainder. This parcel was audited by the Bureau's division office, and no exception was taken to the valuation of the land.

The Bureau's regional engineer has stated that the Bureau does not believe a deduction is appropriate in this instance since the Bureau would be substituting its opinion of the value for that of the State's review appraiser. However, Bureau policy requires that the State's reviewing appraiser estimate the fair market value of the property to be acquired which apparently was not done in the alternate computation which placed a higher value for the land taken on this transaction. The Bureau has agreed to further review the transaction.

2. The State's appraisals for land on parcels 2, 5, 6A, 6C, 9, 11, and 13 of Montana project No. I 90-3(1)152 were based on loss of animal units. According to the regional office appraiser, this appraisal method resulted in gross overpayments to property owners. The State claims for reimbursement of the cost of these parcels were paid by the Bureau. The division office auditors, in their report of review of the parcels, stated that the regional office appraiser's recommendations for disallowance of the overpayments to property owners were not formally cited because such recommendations appeared to conflict with a Bureau policy statement which permits Federal funds to participate in the full amount of settlement otherwise acceptable, if they are not substantially outside the range of appraisals which the State's reviewing appraiser has indicated to be competent and accurate measures of value. It is apparent that, although the appraisals were approved by the State's reviewing appraiser, they were not otherwise acceptable to the Bureau's appraiser and should have therefore been cited by the division office auditors for disallowance.

We were informed by the regional engineer that the State has discontinued the use of the animal-unit method in arriving at land values. He further stated that, while the Bureau was not convinced that values so determined are correct, settlements based on animal-unit appraisals were made in good faith and the Bureau is not in a position to substitute other values for those used by the State. Inasmuch as Federal funds have been expended to reimburse the State for right-of-way claims based upon a method of appraisal that was not acceptable to the Bureau, we believe that the fair market value of the properties acquired should be determined by an acceptable appraisal method and the amount of Federal participation in excess of the fair market value thus established should be recovered from the State. The Bureau advises that the parcels in question will again be reviewed.

3. Parcel 1 on Montana project No. I-IG 90-7(2)327 was purchased by the State on June 20, 1958, for \$200,000. The taking consisted of 34 lots, 2 half lots, and a park area equivalent in size to 5 lots, and there were damages to the remainder of the subdivision. The entire right-of-way area taken was equivalent to 40 lots which were purchased for \$99,000, or \$2,475 a lot.

In addition, damages of \$53,350 were allowed to 23 lots and 4 half lots which amounts to a payment of \$2,750 a lot for damages. Information in the appraisal reports disclosed that 5 lots had recently been sold in the subdivision at prices ranging from \$1,250 to \$2,300. The division office appraiser stated that the Federal Housing Administration (FHA) placed a value of \$2,250 on each lot with all improvements, including a gravel street, and that the Veterans' Administration (VA) placed a value of \$1,800 on each lot for loan-guaranty purposes and later increased the value to \$2,050 with all improvements, except that a gravel and crushed-rock street would be acceptable. At the date of the purchase of the rights-of-way, the streets were only cut in with a "blade" but were not finished in any way. Sewers existed only in part of the project. The comparable sales data and FHA and VA valuations indicate that the value of \$2,475 placed on the lots acquired and the valuation of \$2,750 placed on the lots damaged represent an overstatement of the fair market value of the property.

There were six appraisals made on this property with values ranging from \$132,500 to \$291,000. The appraisal for \$132,500 valued the lots at their current fair market value for quantity purchase, and all other appraisals valued the lots as individual units. The State right-of-way administrator ruled that the \$132,500 appraisal could not be considered because the appraiser discounted the value of the lots over a period of 12 years based on the theory that it would take that long to sell the property. The Bureau's regional right-of-way engineer informed us that the discount method was an acceptable appraisal approach to valuing property that is to be held for investment over a long period of time. An average of about 15 new homes have been built in this area each year during the 4-year period 1955 to 1958, indicating a limited demand for new home sites in the area. The State's right-of-way administrator contended, however, that the discount method appeared to be illegal in the State of Montana because section 93-9913 of the Montana Code, 1947, requires that the measure of compensation shall be actual value at the date of the summons. In our opinion, this method falls within the purview of the cited State statute, since it appears to be a logical way to arrive at the actual value of property that will be sold over a long period of time.

Considerable uncertainty existed at the regional and division office levels as to the propriety of the claim. As a result, the settlement was reviewed and approved by the real property officer of the Bureau's Project Examination Division. He concurred in the decision of the State's right-of-way administrator not to consider the method used in arriving at the \$132,500 valuation because of the contention that it appeared to be illegal. The State has been reimbursed for the Federal share of the cost of this right-of-way, with the qualification that it is still subject to audit by the Bureau. We suggested that the comparable sales data, FHA and VA appraisals, and the appraisal by the discount method be reconsidered by the Bureau in its final determination of the extent of Federal participation to be allowed in this transaction. The Bureau considers that the settlement was justified but indicated that the transaction will be reviewed before final settlement is made with the State.

4. Parcel 47 on project No. F-130(15) was purchased by the State of Montana for \$25,000 on August 25, 1958. The property consisted of an entire taking of a home and land which two State appraisers valued at \$25,819 and \$17,800, respectively. One appraiser estimated the value of the home on the basis of 3,996 square feet, at \$6.59 a square foot. The other appraiser estimated the value of the home on the basis of 1,056 square feet, including a porch, at \$17 a square foot. There was no evidence in support of either appraisal to show how the base unit price was determined, and we could not ascertain which appraisal was accepted as a basis for negotiation. The division office auditors, in their report on review of the parcel, disclosed the wide variation in the valuation of improvements but did not take exception to the difference in area of the home used in preparation of appraisals by the two State appraisers. According to the Bureau, at the time of this settlement it was considered that negotiation at less than the higher of two appraisals would not require deduction of Federal funds; present procedures require a definite finding of market value by the State.

Although the acquisition included an entire taking, not all the land was required for highway purposes. Based on the appraisal reports, the excess land taken was 64,745 square feet which was valued at \$8,417.24 and \$9,064.30

by the respective appraisers. The division office auditors took exception to an excess taking of only 30,000 square feet, at 13 cents a square foot, or \$3,900. We were informed by Bureau officials that part of this land would be required for relocating a State weighing station, the approaches to which would be eligible for Federal participation. They stated that this matter would be further investigated before the final voucher was paid on this project. The State's files did not indicate that the excess taking was to be used for a weigh station and we believe that the division office auditors should have taken exception to the entire excess taking in the absence of such information. The Bureau agreed that an exception should have been taken, and we are advised that in February 1960 collection was made of \$3,481 representing the Federal share of the value of the additional excess taking.

We have previously suggested to the Bureau that the varied and often inadequate information contained in appraisal reports indicates the need for Bureau policies to specify minimum standards for acceptable appraisal reporting. In January 1960, the Bureau issued general guidelines for the preparation of sound appraisal reports which should substantially improve the content of these reports and avoid the situations enumerated above.

Negotiation limits not established on basis of appraisals

The right-of-way parcel files of the State of Montana did not contain documentation indicating limits, based on appraised valuations, within which State negotiators were authorized to make a property settlement. This failure to establish negotiation limits weakens control over negotiations and tends to negate the purpose served by appraisals.

Bureau operating procedures provide that within each State highway department one or more individuals, referred to as reviewing appraisers, are to be delegated authority to determine the fair cash market value of real property, which amount is to govern negotiations and settlements.

The State generally followed the procedure of requiring that two contract appraisers establish the value of property to be taken. A review appraisal was made by the State which consisted of a reconciliation of the values established by the two contract appraisers in arriving at the fair market value of the property to be taken. Although the State's review appraiser established the fair market value of property to be taken, the negotiator was not required to arrange a settlement for that amount and a range was not established within which settlement was authorized. Settlements with the property owner were sometimes substantially above the amount established by the review appraiser without adequate explanation of these variations.

The following examples illustrate several differences between settlement amounts and the valuations established by contract appraisers and the State's review appraisers. The substantial differences between the valuations of the contract appraisers points up the questionable reliability of at least one of the appraisals on each parcel.

Parcel No.	Date acquired	Contract appraisers		State reviewing appraiser	Settlement amount
		A	B		
Project No. I-IG-90-8(5)433:					
23 and 23A.....	Aug. 13, 1958	\$28,661	\$45,700	\$44,993	\$47,908
29.....	Sept. 5, 1958	33,400	78,048	45,199	55,000
Project No. F-FG-228(13): 8.....	Aug. 8, 1958	76,128	79,120	None	87,800

The Bureau's auditors have taken exception to Federal participation in the amount which is in excess of the value established by the State's review appraiser for the parcels cited above for project No. I-IG-90-8(5)433. For project No. F-FG-228(13), the Bureau's auditors have taken exception to Federal participation in the cost of personal property and excess acreage, totaling \$12,880.

The Bureau has informed us that the above-cited acquisitions were handled only shortly after Bureau operating instructions were issued in July 1958, requiring the State reviewing appraiser to establish the fair value of property before the start of negotiations, and that definite negotiation limits are now being established by the State on the basis of a review of appraisals.

OREGON

Lack of justification for special consideration given to grantors

The right-of-way parcel files of the State of Oregon did not contain adequate justification for special consideration given to grantors during negotiations. Negotiators apparently were free to grant special considerations in the form of free rental and retention of certain property after the State acquired the rights-of-way. The Bureau had not been questioning this practice.

The State's procedures for handling improvements located upon rights-of-way acquired for highway purposes provide that rent is normally charged after a period of 30 days and that any general variance from this procedure will be explained in the right-of-way files. We believe that special considerations given to grantors should be justified by the State or an amount equivalent to their value should be disallowed by the Bureau.

The Bureau's regional engineer stated that the value to the State of special considerations that are not fully supported should be handled in the same manner as any other unsupported deviations from appraisals—by deduction from the State's claim if such value is substantial. The region is presently requiring further documentation to support special considerations given to grantors of the types described below but expects to be reasonable in the application of the term "substantial."

1. Parcel No. 28039 on project No. I-5-6(14)301 was purchased by the State of Oregon on October 31, 1958, for \$313,000. The estimated value of the property established by four contract appraisers varied from \$303,350 to \$313,000. The State's review appraiser stated that the fair market value would be within that range.

In the negotiated agreement with the grantor, in addition to the cash settlement at the high appraised value of \$313,000, the grantor was given free use of the property for a period of 8 months. The grantor, who had exercised a purchase option under a lease agreement, had been paying the lessor rent of \$1,108 a month prior to acquisition. The grantor was also allowed to retain equipment appraised at \$9,357 which was included in the high appraisal of \$313,000. The Bureau advises that the State estimated that it could have realized only \$1,724 if it had acquired the equipment and resold it to the high bidder.

In the report of negotiations, the value of land and buildings was increased and the value of equipment reduced by \$9,357. There was no explanation for this departure from the appraisal, and there was nothing available in the State's files to justify the special considerations given to the grantor or the cash settlement at the high appraisal. The amount of \$313,000 claimed by the State was paid by the Bureau.

The Bureau's appraiser recommended Federal participation in the full amount of the purchase price because the value of the special considerations was not substantial in relation to the total amount paid. The value of rent-free occupancy and the equipment retained by the property owner was in excess of \$10,500, which would appear to be of sufficient consequence to warrant deduction from the State's claim. The Bureau, however, does not consider this variation above the high appraisal to be substantial enough to require justification by the State; the total settlement exceeds the low appraisal by more than \$20,000.

2. Parcel No. 27831 on project No. U-131(20) was purchased by the State of Oregon on June 23, 1958, for \$65,500. The property was appraised by three appraisers at values ranging from \$60,500 to \$67,626. The appraisal of \$67,626 included equipment valued at \$6,577. The value placed on the equipment was not clear in the other two appraisals.

The agreement with the grantor provided that, in addition to the cash settlement of \$65,500, he would be allowed to retain the equipment and would not be charged rent on buildings he would occupy from date of purchase to January 1, 1959, a period of about 6 months. We found nothing in the State's files to justify making this arrangement with the grantor. The parcel was audited by Bureau division office auditors, and except for a \$550 exception Federal participation was allowed in the full amount of the cash settlement.

On the basis of several hypothetical assumptions as to the fair value of the rent and the resale value of the equipment had it been acquired, the Bureau has determined that the settlement would not be substantially in

excess of the high appraisal; the assumptions are acknowledged by the Bureau to be conjectural.

In both the examples cited above, Bureau determinations that values of special considerations given to grantors are not substantially in excess of appraisals are predicated upon acceptance of the high appraisals as representing the fair market value of the property acquired. While the Bureau acknowledges that the high appraisal does not always represent fair market value, apparently little consideration was given to the low appraisals which differed from the high appraisals by \$9,650 and \$7,126, respectively. These amounts, when added to the value of special considerations, would represent rather significant variations above the low estimates of fair market value of the property acquired. Under the circumstances, the Bureau's application of the term "substantial" appears to have been too liberal.

In another transaction (parcel No. 22531-L2679, project No. I-5-6(2)297), the State originally offered the property owner \$87,000 based on land and improvements valued at \$42,000 and machinery and equipment valued at \$45,000. The owner's valuation of the taking was \$91,250, but he offered to settle for \$78,000 provided he retained title to the machinery and equipment. Under the terms of the settlement, the property owner was paid \$42,500 for the land and improvements and \$35,500 to relocate the machinery and equipment which he retained. Thus, the State received a credit of only \$9,000 for the machinery and equipment retained by the owner.

With regard to this transaction the Bureau has stated: "Assuming the State's net return on sale of this equipment would not have been substantially greater than this credit, there should be no objection to the settlement made." The State, however, had appraised the fair value of the machinery and equipment at \$45,000, and an independent contractor had estimated the cost of moving it at \$5,000, a net appraised value of \$40,000. In the absence of a bona fide estimate that the resale value of the machinery and equipment was substantially less than the appraisal by the State, the settlement by the State appears to have favored the property owner by more than \$30,000. He not only received \$42,500 for the land and improvements and retained the machinery and equipment, but was also paid \$35,500 to relocate the machinery and equipment compared with an estimated relocation cost of \$5,000. This transaction was audited by the Bureau in August 1958 and no exception was taken. We believe that the extent of Federal participation in the cost of this taking should be reconsidered by the Bureau.

HIGH COURT AWARDS IN MONTANA AND OREGON

In certain condemnation cases for rights-of-way in the States of Montana and Oregon, court awards have been considerably higher than the States' offers, which were based on appraisal valuations of the property acquired.

In Oregon, court awards in 259 condemnation cases since July 1, 1956, have averaged 23 percent above the State's offers. The widest variances between the amounts of the State's offers and the court awards were noted in the following counties:

County	Number of cases	State's offer	Verdict	Percentage above offer
Tillamook.....	5	\$39,335	\$72,705	85
Polk.....	13	51,255	81,295	59
Curry.....	11	76,614	131,150	71
Grant.....	3	5,723	17,000	197
Clatsop.....	2	9,650	14,650	52

The amounts of individual court awards ranged up to eight times the amounts of the offers made by the State.

The State of Montana did not maintain records of condemnation cases in such form as would permit us to determine the overall extent of variation between State offers and court awards. However, we noted that, on project No. F-62-(6), parcels 25, 26, 27, 30, 31, 33, and 34, the court awarded the landowner \$47,680, compared with the high appraisal of \$9,582. The final voucher was paid by the Bureau in March 1958, and, although the Bureau auditor questioned the high settlement, the comments of the former State attorney who handled the case were accepted as justification for no appeal.

In a digest of new developments in right-of-way policies and procedures, prepared by the right-of-way division of the Bureau's Office of Engineering, the following statement is made:

"However, if it is found that the settlements made by a jury award procedure are very costly to the general public and are not found to be in the public interest, the Federal Highway Administrator can prescribe that Federal-aid participation be based on a more reasonable amount, or he may withdraw his approval of the right-of-way procedures being followed by the State until these procedures are satisfactorily corrected."

Bureau operating procedures did not make any provision for implementing this policy, and at the time of our review the record of high court awards in Montana and Oregon had not been called to the attention of the Federal Highway Administrator. In November 1959, the Bureau's regional engineer informed us that the Bureau's Washington office had been notified of the situation in Montana and Oregon.

Recommendation.—In view of the fact that Federal participation was being allowed in court awards that were substantially in excess of appraisal valuations, we recommended that the cited policy, established by the Federal Highway Administrator on the matter of Federal participation in such court awards, be clarified and that operating instructions be issued for implementing the policy. In May 1960, Bureau policy relative to court awards in condemnation cases was restated and guidelines for administration of the policy were issued. The Bureau does not question the judicial action of State courts but does require assurance that the State's cases were soundly presented and that the State reasonably exercised all appropriate legal procedures, such as motions for new trials or appeals.

NEED FOR MORE COMPETENT BUREAU AUDITS OF RIGHTS-OF-WAY

In our review of State and Bureau operations in the acquisition of rights-of-way for Federal-aid highways, we observed certain Bureau audit activities that we believe should be substantially improved. We have previously presented (pp. 42 to 52) examples of weaknesses in State right-of-way procedures and practices that were apparently overlooked by the Bureau's auditors. In some instances, although the auditors questioned the procedures and practices employed by the State, no formal citation was issued by the Bureau. We believe that in many more instances the Bureau's auditing staff should have recommended that Federal participation be limited because State acquisitions were not adequately supported, in accordance with prescribed Bureau operating procedures.

Of additional concern to us was the several audits and reviews that were made of certain right-of-way transactions, on Montana project No. F-FG-228(13), by auditors of the Bureau's division and regional offices and the Project Examination Division, without any definitive course of action being taken with respect to the right-of-way costs in question. We were informed by the Bureau's regional engineer that the results of the audits as summarized below, were not indicative of the type of audit being performed in the Bureau's division office and that the supplemental reviews by the region were made as a result of questions raised by the special legislative committee investigating the Montana State Highway Department and because the region was dissatisfied with the previous audits. The work performed by the Bureau's Project Examination Division was limited to a review of the regional office audit reports on the transactions questioned by the special legislative committee.

1. Parcel No. 5 was audited by Bureau division office auditors on November 21, 1958, and no exceptions were taken. The parcel was reviewed by the Bureau's regional office auditors, and recommendations were made in their report of April 22, 1959, for a citation of \$18,727 for settlements in excess of fair market value, and \$6,500 for salvage value of improvements retained by the grantor. The Bureau's Project Examination Division recommended in a memorandum report of May 6, 1959, that, if Federal participation was to be limited to amounts considered eligible as reported, information was necessary as to the amount that could be realized from the sale of improvements to determine whether or not it was economical to allow the owner to retain the improvements. The division auditors made another review of this parcel dated June 30, 1959, wherein they listed items totaling \$14,012 as not adequately justified.

At the time of our review, no citation had been made by the Bureau. We reviewed the parcel and noted that the signed agreement with the prop-

erty owner showed that the State paid for 66,646 square feet of land at the appraised value of 80 cents a square foot, or \$53,317. The warranty deed, however, conveyed only 0.45 acre or 19,602 square feet of land which is the area required for right-of-way. Thus, the State paid for, but did not acquire, an excess of 47,044 square feet of land at 80 cents a square foot, costing \$37,635. None of the above-mentioned audits and reviews performed by the Bureau raised a very basic question concerning the difference between the area actually purchased as shown by the deed and the area paid for as shown by the property settlement.

2. Parcel No. 6 was audited by the Bureau's division office auditors whose audit working papers show that there was an unexplained difference of \$1,850 between the price paid by the State for easements and the negotiator's justification for adding easements to the settlement. Various items of damage were also questioned in the working papers. No exceptions were taken to either the amount paid for the easements or the damages because the auditor concluded that, in accordance with his interpretation of a Bureau policy statement on rights-of-way, the settlement was proper for payment. This statement permits acceptance of appraisals if found by the State's reviewing appraiser to be competent and accurate measures of fair cash market value. The Bureau's division office recommended Federal participation in the full amount of the right-of-way costs. The parcel was reviewed by the Bureau's regional office auditors and exceptions were taken to the total cost of the aforementioned easements. The Bureau's Project Examination Division recommended in its report that, in addition to the amounts cited by the regional auditors, consideration also be given to suspending \$5,500 in damages which apparently were not supported. The parcel was again audited by the Bureau division office auditors on June 30, 1959, and the auditors concluded that the exceptions were entirely a matter for the division office appraiser to decide. No formal citations had been issued to the State at the time of our review.

3. Parcel No. 3 was audited by Bureau division office auditors and no exceptions were taken. A review of the parcel was made by the Bureau's regional office auditors. In their audit report the auditors stated that settlement in the amount of \$185,000 was made on the basis of a whole taking, with a substantial estimated value on the excess taking. In the absence of specific information as to the value of the necessary rights-of-way plus the amount of the damage to the remainder, the entire settlement was questioned until such time as a determination of eligible costs could be made. They also indicated that the State had not claimed reimbursement on this parcel to date, although the voucher was paid by the Bureau on November 6, 1958.

Subsequent to the regional office audit, the Bureau's division office determined that all land acquired was necessary for highway construction. The Project Examination Division merely asked whether the fee appraiser revised his appraisal report for a valid reason. The claim was again audited by the division office auditors on June 29, 1959, and exception was taken to furniture, valued at \$11,744, included in the agreement with the grantor. We are concerned that it took four reviews by the Bureau to disclose that Federal participation in the acquisition of personal property was not allowed.

We believe that the several audits made in each of the three examples cited above, without arriving at conclusions as to the amounts eligible for Federal participation, indicate some serious weaknesses in Bureau auditing. We were informed by the Bureau's regional engineer that the procedures and practices followed by Bureau division and regional office auditors were being reviewed to ascertain how the Bureau's audit of right-of-way costs can be strengthened. In September 1959, the Bureau issued an audit program for the guidance of Bureau field auditors in their examinations of transactions involving the acquisition of rights-of-way.

OTHER OBSERVATIONS CONCERNING STATE AND BUREAU RIGHT-OF-WAY PRACTICES

We brought a number of other matters concerning the practices followed by the State and Bureau in right-of-way transactions to the attention of the Bureau's regional engineer. In some instances corrective action has been taken by the State or the Bureau's regional engineer; other matters require the consideration of the Federal Highway Administrator.

1. The State of Montana can acquire only an easement interest in land by condemnation proceedings according to the provisions of the Civil Code of Montana. As a result of the lack of authority to acquire fee simple title by condemnation, land so acquired reverts to the owner if no longer needed for highway purposes; such would be the case if the alignment of the highway is shifted for any reason. The Bureau agrees that the possible loss to the State of the use of the land without being able to recover the cost of the easement—which is usually equivalent to the cost of a fee simple title—seriously impedes a program for the advance acquisition of rights-of-way. If the State had authority to acquire full title, the financial investment would not be forfeited and the State could sell or exchange the land and recover at least part of the acquisition cost.

The Bureau's regional engineer acknowledged that the State's condemnation law was inadequate in this respect but stated that he believed that the Bureau should not interfere with State legislation. We believe it to be essential that the Bureau encourage the revision of the State statute to permit the State to obtain a fee simple title in the acquisition of rights-of-way, by condemnation, for Federal-aid highways. The Bureau advises that it should and does urge highway departments to seek remedial legislation where desirable.

2. The monthly right-of-way reports prepared by the Bureau's division office appraiser in Montana were not in sufficient detail to identify specific problem areas that might need the attention of the regional or the Washington office. For example, the report of May 1959 stated:

"There is still much to be desired to improve the State's appraisers and negotiations, and an effort to accomplish this is being made by visiting each of the State's district offices and conducting a formal conference or discussion with State right-of-way personnel in each of these offices."

The report does not describe the specific weaknesses in appraisals and negotiations or the recommendations for improvement made at the conferences.

The Bureau's regional engineer stated that he thought that the reports were adequate because of the constant contact between the regional and the division offices. We do not see how these reports can be of much use to the Bureau's Washington office considering that the instructions which have been issued for the preparation of the right-of-way report require that it be sufficiently detailed to show the basis for the appraiser's findings and contain specific comments on the reviews, processes, checks, and actions which have been conducted by the division office. We are advised that recent reports have been prepared in more detail.

3. At the time of our review, the Oregon State Highway Department had not prepared a manual of its right-of-way practices and procedures. Information submitted to the Bureau on January 9, 1957, concerning the State's right-of-way organization, policies, and procedures included a statement that a manual of procedures and practices for the right-of-way department was being prepared. We found no evidence that progress had been made by the State toward completion of the manual or that the Bureau had done anything to encourage the State to expedite completion of a manual.

We were informed by Bureau officials that they had taken no action to encourage the State to expedite completion of the manual because there were other more pressing right-of-way problems to be solved. We think that it is important that acceptable practices and procedures be prescribed in manual form so that State personnel may have authentic standard guidelines for a proper understanding of what they are expected to do. The Bureau agrees that a manual is highly desirable and the State has been requested to complete the manual in accordance with its commitment.

EXHIBIT 1-E

[From report to the Congress by the Comptroller General of the United States, May 1961—
New Mexico and Wyoming]

WEAKNESSES AND DEFICIENCIES IN THE ACQUISITION OF HIGHWAY RIGHTS-OF-WAY

Significant weaknesses and deficiencies were noted in matters relating to the acquisition of rights-of-way for Federal-aid highways in the States of New Mexico and Wyoming. The particulars of these matters and the corrective action either initiated or under consideration by Bureau and State officials are described below.

NEW MEXICO

Our examination of documentation in the files of both Bureau and State highway department offices in New Mexico concerning the acquisition of 174 parcels of rights-of-way on 7 Federal-aid projects indicates a need for more vigorous Bureau action to obtain improvement in State acquisition policies and procedures and in the documentation in support of right-of-way transactions.

Our specific findings in New Mexico include (1) increased highway costs arising from insufficient leadtime for acquisition of rights-of-way, (2) non-participation by right-of-way personnel in determining highway locations, (3) inadequacies in appraisal reports, and (4) accumulation of credits due the Government for long periods of time.

Insufficient leadtime for acquisition of rights-of-way results in increased condemnation and high court awards

The right-of-way section of the New Mexico Highway Department has not had sufficient time in certain instances to appraise and negotiate for highway rights-of-way with the result that it has been necessary to obtain right-of-entry to properties through condemnation procedures. Condemnation procedures frequently result in court awards to the property owners that are higher than State offers based on State appraisal valuations.

On July 30, 1958, the State reported to the Bureau's division office that about 85 percent of the rights-of-way for interstate routes were being condemned. According to Bureau officials, many properties are condemned for right-of-entry because of a lack of time to appraise the rights-of-way and negotiate with the property owners before the right-of-entry is needed. Only a small fraction of condemnation cases ever go to trial, however, since after the right-of-entry is obtained the State negotiates with the property owners and settles out of court whenever possible. We believe that the initiation of court proceedings should be avoided where possible because of the additional costs resulting therefrom. Costs substantially in excess of the State's appraisals have been incurred in condemnation cases in three ways:

1. Extremely high values placed on property by court-appointed appraisers have caused the State to settle cases out of court for amounts in excess of State appraisals rather than to risk high jury awards.
2. In some instances where condemnation cases have gone to trial, jury awards have been considerably higher than the State appraisals.
3. Condemnation cases have been tied up for long periods in the courts resulting in interest charges payable to the grantors.

New Mexico State law formerly required that, when a condemnation petition was filed by the State highway department, the court appoint a 3-man board of commissioners to appraise the condemned property. A preliminary hearing was held in the county court during which the court commissioners and the State highway department presented appraisals and testimony. If the court award was not acceptable to either party, a jury trial was requested.

In some cases, the appraisals by court commissioners were much higher than the State's appraisals. Because of the extremely high appraisals by court commissioners for rights-of-way on one Federal-aid project reviewed, the State settled with property owners by stipulation for amounts greatly in excess of its appraisals. Property appraised at \$578 by the State and \$427,100 by the court appraisers was acquired for \$31,200. The State appraisals and settlement amounts are not completely comparable in this case because the settlement included payments for borrow pits and additional rights-of-way not included in the State appraisals. The State justified these settlements, in part, on the basis of the possible outcome of a jury verdict and the cost of an extended jury trial.

The Bureau has informed us that, in reference to the court awards on the above-cited project, it is keenly aware of the unusual conditions surrounding excessive court commissioner appraisals and subsequent high settlement figures on certain parcels condemned and taken for the project. Also, no Federal funds have been expended to date for rights-of-way on this project and no payments will be made to the State for any stipulated settlements in excess of the State appraisals unless fully justified and documented.

In other cases where court appraisals were much higher than State appraisals, jury awards, while below court appraisals, have been considerably more than the State appraisals. The following tabulation is a comparison of appraisals and awards on selected acquisitions:

Appraisal		Jury award
State	Court	
¹ \$57,535	\$113,473	\$95,000
1,995	8,592	4,600
6,475	100,000	30,300
7,677	20,000	18,000
28,808	60,000	40,600

¹ The State appraisal of \$57,535 did not include payment for several items valued at \$11,304, which were subsequently determined to be realty and included in the jury award of \$95,000.

At the time of our review the State had not submitted claims for the foregoing jury awards.

In addition to awards and settlements in amounts in excess of appraisals, the State has also incurred additional costs for interest on amounts awarded by juries. New Mexico law requires interest on condemnation awards at 6 percent from the date the petition in condemnation is filed. Condemnation cases are in the courts for long periods, sometimes for over 2 years, resulting in substantial interest costs to the State. Interest charges on acquisition of 11 parcels of rights-of-way totaled over \$17,000.

A new condemnation law which became effective in New Mexico on April 2, 1959, permits condemnation cases to go directly to trial by the court or by jury without appraisals by the court. This law has not been in effect long enough to determine its effect on amounts awarded by juries. It should, however, serve to reduce interest charges by speeding up condemnation cases. We were informed by the State legal section that one case tried under the new law took 2 months from filing to award.

The Bureau's division engineer in New Mexico stated that the lack of sufficient leadtime for right-of-way appraisal and negotiation in New Mexico was the result of pressure by both the New Mexico State Highway Commission and the Bureau of Public Roads, Washington office, to get projects started during the early period of the interstate program. The Bureau has advised us that the need for adequate leadtime in acquiring rights-of-way is recognized. In various discussions with the State highway department, the New Mexico division office has stressed the importance of adequate leadtime and will continue to urge the State to improve its procedures. According to the Bureau, all jury awards are closely scrutinized and it will not participate in any costs that appear to be excessive unless the State has taken advantage of all available legal remedies. This policy does not mean that the Bureau will disallow amounts of jury awards merely on the basis of an opinion that the amounts awarded are too high.

Although the problem of high court awards had been recognized by the Bureau for some time, Bureau policy did not provide specific and definitive guidelines to facilitate determinations of the extent of Federal participation in such awards. In our report on review of the Federal-aid highway program in region 8—Portland, Oreg., October 1959 (B-118653), we recommended that the Bureau clarify its policy on the matter of Federal participation in court awards that appear to be high when compared with appraisal valuations. In May 1960, the Bureau issued a policy statement relative to State acquisition of rights-of-way by condemnation. The Bureau does not question the judicial action of State courts but requires that the court and jury have the benefit of a sound presentation of the State's case and that the State reasonably exercise all appropriate legal procedures, such as motions for a new trial or for taking of an appeal.

Right-of-way personnel did not participate in determining highway locations

In New Mexico, neither State nor Bureau right-of-way personnel accompanied the location and design engineers on inspections made to determine highway locations. This procedure was not in accord with Bureau policy. State highway

department personnel explained that right-of-way representation on location inspections would not be beneficial because (1) State right-of-way personnel are not sufficiently trained to be of technical assistance in location inspections, (2) inspection parties which are too large are ineffective, and (3) location engineers are conscious of improvements that would tend to increase the cost of rights-of-way. Officials of the location and design division of the State expressed the view that they did not think that advice from right-of-way personnel would be helpful.

Under the State's procedure, a field representative of the State highway engineer contacted all property owners on the proposed project immediately after the location inspection. He determined the effect of location and design on the cost of right-of-way acquisitions and reported his findings to the State highway engineer. A Bureau right-of-way representative accompanied the field representative on these inspections.

The Bureau's Washington office had accepted the State's procedures, with a recommendation that the Bureau's regional engineer continue to urge the State highway department to permit more participation by right-of-way representatives in highway locations at an early stage. Bureau policy on this matter currently provides that:

"A right-of-way representative from the State and from Public Roads should make inspections in company with the location and design engineers at both the preliminary and final stages of location of the highway."

In our opinion, right-of-way costs should be given full consideration during preliminary stages of highway location and design determinations to keep the costs of property acquisition and damages at a minimum, consistent with adequate alignment and design. We believe that a properly qualified right-of-way representative's specialized knowledge of land and improvement values and damage costs makes it desirable that his views be considered in ascertaining the effect of highway location on these costs.

Bureau officials acknowledged that the State's alternate procedures were not entirely satisfactory and advised us in April 1960 that the State had revised its procedures to provide for participation by State and Bureau right-of-way personnel in highway location studies in the future. According to the Bureau, the situation in New Mexico was accepted because the above-quoted policy is not a mandatory policy. The Bureau stated that, while it believed right-of-way personnel should accompany design and location engineers on inspections at the preliminary stages, it realized that all States had not yet recognized the value of such a practice and, therefore, the Bureau believed that the States should be encouraged rather than required to adopt this practice. Since the Bureau recognizes the desirability of a policy that would adequately consider right-of-way costs in highway location studies, we believe that the "suggested" policy should be made a required policy during both the preliminary and final stages of highway location studies.

Inadequacies in appraisal reports

During our review of appraisal reports on 174 parcels of rights-of-way on 7 Federal-aid projects, we noted that (1) comparable sales were not properly correlated in certain instances, (2) for certain parcels costing over \$25,000, only one appraisal was obtained prior to acquisition, contrary to prescribed Bureau policy, (3) an inaccurate appraisal report resulted in additional right-of-way costs, and (4) certain other appraisal practices did not conform with Bureau requirements.

Comparable sales not properly correlated.—Progress voucher No. 2 for project No. F-021-1(1) represented a State claim for Federal participation in about 56 parcels of rights-of-way which cost the State \$327,861. Comparable land sales were listed on the appraisals supporting this claim, but the land values used in the appraisals were not related to the comparable sales where such correlation appeared to be appropriate. This progress voucher had been audited and paid by the Bureau, but no questions of record had been raised at the time of audit.

In our opinion, an acceptable appraisal should show the basis for all values. When comparable sales are listed, the appraisal should show which sales were used as a basis for comparison and any adjustments made to determine the value of the property being taken. Bureau officials in Washington advised us that the reviewing appraiser considered a statement accompanying the appraisal reports for this project that "All real estate sales, listings, offers, and transactions in the area were gathered and studied," as acceptable when weighed

with other factors contained in each report. They stated that the individual appraisals on this project were made in accordance with a mass appraisal technique and that the procedure by which each appraisal had been reviewed, dated, and signed by the reviewing appraiser was indicative of acceptability under this technique.

We do not believe that these comments by the Bureau's Washington office adequately explain the lack of correlation of the comparable sales data with the estimates of value established in the appraisal reports. The reports covered a variety of commercial and residential properties which were not identified in any way with the listing of comparable sales. The Bureau's regional engineer stated that the cited appraisals were made in late 1957 and the deficiency cited had been corrected on current projects.

Required number of appraisals not obtained.—In certain instances the State of New Mexico has acquired rights-of-way before obtaining the number of appraisals required by Bureau operating instructions.

Bureau instructions effective January 1, 1957, required two appraisals before negotiation for properties improved for industrial or commercial purposes. Bureau revised instructions dated January 31, 1958, require two appraisals of all improved properties where the first appraisal is in excess of \$25,000. Examples of noncompliance with Bureau policies follow:

1. On project No. I-040-5(5), the State acquired two improved commercial properties by condemnation after only one appraisal. Bureau policy in effect at the time of this acquisition, May 1957, required two appraisals on improved commercial property.

2. One improved parcel on project No. I-025-4(1), appraised at \$114,500, was acquired after only one appraisal.

3. Two appraisals were obtained for a parcel on project No. F-021-1(1), valued at \$32,060, but the second appraisal was obtained after acquisition of the property. We have been informed that the Bureau is considering disallowing the cost of this parcel.

4. The rights-of-way for project No. F-001-3(4), which has not been submitted to the Bureau for reimbursement, include three improved parcels for which the first appraisal was in excess of \$25,000. At the time of our review, none of the rights-of-way for this project had been fully acquired. However, options had been obtained on two of those parcels for which a second appraisal is required. As a result of our inquiry, the Bureau's division appraiser has requested the State to obtain second appraisals on the three parcels appraised at values in excess of \$25,000.

Officials at the Bureau's regional office stated that they would investigate the above matters further and, if a clear violation of Bureau policies is shown, appropriate disallowances will be made. We were advised also that the Bureau's regional and division offices would continue to work with the State in an effort to improve appraisal reports and obtain better compliance with Bureau policies.

Inaccurate appraisal report resulted in additional right-of-way costs.—The Bureau has participated in damage costs paid by the State of New Mexico which resulted from an inaccuracy in the State's original appraisal.

The State's original appraisal of one parcel which we reviewed did not consider damages resulting from a 12-foot cut in front of the property which was in the plans at the time of the appraisal. After claiming that he received incorrect information from the project engineer concerning the grade in front of his property, the owner accepted settlement in the amount of the appraisal. The owner then purchased additional frontage, moved his buildings, drilled a new well, and made other adjustments necessary to set up business again. After construction of the road, the State made a supplemental appraisal of the damages resulting from the 12-foot cut in front of the property. The supplemental appraisal included damages to the additional land purchased and damages based on the value of the relocated improvements, which exceeded the value of the improvements as originally located. Also, replacements of items purchased by the State in the original settlement, such as a well and septic tank, were considered in computing damages in the supplemental appraisal. The Bureau participated in the full amount of the damages of \$3,978.

We questioned the basis for Federal participation in damage payments based on the supplemental appraisal and were subsequently advised by the Bureau that, with the State's concurrence, Federal participation in the damages cited had been disallowed.

Other deficiencies in appraisal reports.—Other deficiencies noted in New Mexico appraisal reports were as follows:

1. Second appraisals obtained on two parcels on project No. F-021-1(1), both improved properties appraised in excess of \$25,000, were made by a State appraiser. For one parcel the second appraisal contained amounts for land, improvements, and damages, which were identical to the amounts of the first appraisal obtained. For the other parcel the amounts for land and improvements were identical to amounts of the first appraisal but the amounts for damages were different. The second appraisal referred to the first appraisal for a list of improvements and for comparable sales data.

We believe that, in cases where two appraisals are required, the Bureau should require the State to submit independent appraisals.

2. The appraisals for 10 parcels on project No. I-025-4(1) contained no photographs of improvements totaling \$52,650, although there was a statement that photographs were available in the appraiser's files. Division office officials said that the photographs would be obtained and filed with the appraisal report as required by Bureau policy.

3. Appraisals for the cost of 15 parcels claimed on the third progress voucher for project No. I-025-4(1) did not contain tabulations of sales for the 5 years preceding the date of the appraisal, though required by Bureau policy.

4. The appraisals for two parcels on project No. F-001-3(4) were not signed by the appraiser.

5. Right-of-way maps for the final voucher on project No. I-010-1(3) did not show improvements. Of the amount claimed on the voucher, more than 95 percent is attributable to the cost of improvements. The Bureau has advised us that this deficiency has been corrected.

6. Damages to 10 parcels on project No. F-021-1(1) were appraised as a percentage of the remainder. No explanation was given as to the manner in which the percentage was developed.

We were advised by the Bureau that appropriate consideration would be given to the above matters in examining the State's final claims for reimbursement of the costs of the projects involved.

Credits due the Government allowed to accumulate for long periods

Contrary to established Bureau policy, right-of-way progress vouchers submitted by the State of New Mexico did not provide for offsetting the claimed amount by the Government's share of credits due from rentals and sales of improvements. As a result, sizable credits due the Government from the State have been allowed to accumulate for long periods of time.

Bureau instructions dealing with reimbursement for right-of-way costs require that any progress voucher containing the State's claim for reimbursement of expenditures made for rights-of-way be supported by all net credits due the project. However, in New Mexico, the Government's share of credits due from rentals and sales of improvements on advance right-of-way acquisitions was not credited until the State submitted a final right-of-way voucher for the particular project involved.

Federal-aid project No. I-025-4(1) is illustrative of the accumulation of credits due the Government over a long period. Acquisition of rights-of-way was authorized for this project on April 23, 1956, and a project agreement between the State and the Bureau was executed on March 14, 1958. Two right-of-way vouchers had been submitted to the Bureau on this project at the time of our review. The Bureau auditor's workpapers showed that as of August 1958 the State had collected rentals of \$61,840 on property for which reimbursement was claimed on the first voucher. As of March 1959, rentals of \$4,585 had been collected on property for which reimbursement was claimed on the second voucher.

The Bureau's regional engineer advised us in April 1960 that the Bureau had received a rental credit of \$142,741 on a third right-of-way progress voucher for project No. I-025-4(1) and that the State had been requested to offset the amount claimed on each subsequent progress voucher by any credits due the Government.

WYOMING

Our examination of documentation in the files of both Bureau and State highway department offices in Wyoming concerning the acquisition of 174 parcels of rights-of-way on 15 Federal-aid projects disclosed that much improvement is generally needed both in State acquisition policies and procedures

and in documentation supporting right-of-way transactions. The specific matters observed concern the need for: (1) Improving appraisal practices; (2) preparing and issuing a State manual of right-of-way procedures; and (3) shifting emphasis in Bureau reviews of State right-of-way practices.

Many of the deficiencies noted are attributable, in our opinion, to the fact that the State had not adopted adequate written policies and procedures on appraisal reporting and had not received written instructions from the Bureau on minimum requirements for appraisal reports. Also, we believe that the Bureau's review function should be redirected in Wyoming to obtain correction of certain basic procedural weaknesses and deficiencies in the State's right-of-way practices. The Bureau's efforts have apparently been concentrated primarily on obtaining proper documentation to support the settlement of specific State claims, without seeking to remove the causes of the difficulties.

Need for improving appraisal practices

Appraisal reports on 166 of the 174 right-of-way parcels reviewed contained one or more of the following deficiencies: (1) The bases and methods used in determining values for land, improvements, and severance damages were not shown on the appraisal reports; (2) joint appraisals were sometimes made; and (3) three appraisals were obtained in certain instances on land valued at from only \$10 to \$25 an acre.

Appraisal reports on the projects selected for review had been prepared during the period from October 1956 to April 1959. The more recent of these reports showed certain significant improvements where the reports had been prepared by State employees. In contrast, appraisal reports prepared by State-employed fee appraisers showed little change during this period.

Bases and methods used in determining values, not shown on appraisal reports.—Appraisal reports prepared by State-employed fee appraisers did not, in the great majority of cases, contain any statement or reference to the bases and methods used in determining values for lands, improvements, and damages. Appraisal reports prepared by State employees also lacked this information, except for the most recent reports.

The lack of complete information in appraisal reports, setting forth the bases and methods by which values are determined, makes it extremely difficult for State and Bureau reviewing officials to pass reasonable judgment on the adequacy of the appraisal reports. Further, where more than one appraisal is obtained on the same parcel of the rights-of-way and the values differ substantially in amount, the absence of such information would appear to necessitate much supplemental inquiry in order to reconcile the different values. From an audit standpoint, the lack of sufficiently detailed information in appraisal reports will make it difficult for the Bureau's auditors to determine whether items for which Federal-aid funds are not generally eligible for participation have been considered in establishing appraisal values.

The following examples are representative of the deficiencies noted.

1. On project No. F-036-1(1), 11 parcels were acquired by the State at a total cost of \$15,925 on the basis of appraisals made in January 1959 by a fee appraiser, a State appraiser, or both. The fee appraisals provided no indication as to the bases and methods used in determining appraised values. The State appraiser listed comparable sales, but the values established by appraisal were not related to the sales. The State's claim for the Federal share of the cost of the rights-of-way had not been submitted to the Bureau for reimbursement at the date of our review.

2. On project No. I-25-2(4), 13 parcels were acquired by the State in 1957 at a cost of \$42,550 on the basis of appraisals made by two fee appraisers. The appraisals contained no indication of the bases and methods used in determining values. In addition, the State paid \$15,590 in damages on 4 parcels which were not supported by appraisals. After obtaining supplemental appraisals by its own appraiser to support the damages claimed, the Bureau reimbursed the State for the cost of these parcels.

3. On project No. I-90-2(6), two fee appraisers valued 17 parcels in the respective amounts of \$13,190 and \$14,140 and a State appraiser estimated the value of these parcels to be \$14,325. These appraisals were made in April 1959. The fee appraisals did not state the method or basis of determining values, whereas the State appraisal indicated that a comparable sale was used in arriving at the value. The State had not acquired these parcels at the time of our review.

4. On project No. I-90-3(4), appraisals were made by two fee appraisers and one State appraiser in October and November 1958. None of the appraisals for 5 parcels, valued at approximately \$80,000, showed the method or basis of determining land values. The State's claim for reimbursement of right-of-way costs on this project had not been submitted to the Bureau at the time of our review.

Bureau officials stated that the State of Wyoming is now tending to use fewer fee appraisers and that the Bureau had relied on reviews made by division office appraisers to approve payments of State claims. They advised us further that the State had been informed that fee appraisals must contain adequate documentation in support of values established, if they are to be acceptable for reimbursement with Federal-aid funds. Also, the State is issuing instructions to fee appraisers to include more information in their appraisal reports.

Use of joint appraisal reports.—Appraisal reports prepared by two fee appraisers for the State on four of the projects reviewed contain indications that they were prepared jointly. We noted that values established in the appraisals were identical for every parcel, even where improvements and damages were involved. Joint appraisals, or purportedly independent appraisals prepared through collaboration, do not, in our opinion, represent the independent judgment of either appraiser. We believe further that where joint, or "cooperative," appraisal reports are prepared, appraisal costs are increased without obtaining the benefit of the independent judgment of each appraiser. The Bureau's instructional memorandums on right-of-way policies and procedures formerly discouraged joint appraisal practices, but its current revised memorandums are silent on this matter.

The following points were noted on each of the projects :

1. Two fee appraisers reported identical values for 9 parcels on project No. F-040-2(1). The Bureau participated in the fees of both appraisers. Both fees, however, amounted to only \$30.

2. Two fee appraisers reported identical values for land and improvements for 8 parcels on project No. I-25-4(3). Appraisal fees on this project had not been submitted to the Bureau for reimbursement. We were advised by the Bureau that the State did not use the fee appraisals as a basis for negotiation because of omissions of certain elements pertinent to the property.

3. Appraisals made by two fee appraisers for 12 parcels on project No. I-090-3(4) were identical in every respect including severance damages. The Bureau has informed us that only one of the fee appraisals was used by the State. The right-of-way costs for this project had not been submitted to the Bureau for reimbursement at the time of our review.

We believe that, where two appraisals are made for the purpose of obtaining a comparative evaluation of the property to be acquired, the Bureau should require that the two appraisals be prepared independently if their cost is to be eligible for Federal participation. We have previously suggested that the Bureau restate its policy concerning the conditions under which two or more appraisals are necessary, to include the requirement that such appraisals represent the independent judgment of each appraiser. The Bureau has advised us that a revision of Bureau policy now under consideration will satisfactorily resolve this matter.

Unnecessary appraisals obtained on low-cost land.—On project No. I-90-2(6), the State obtained three appraisals on 22 parcels of land acquired although land values on these parcels ranged from only \$10 to \$25 an acre. In each instance, two appraisals were obtained from fee appraisers and one from a State appraiser. Bureau officials informed us that the latter appraisals were necessitated on a number of parcels because of a change in right-of-way requirements.

We believe that one appraisal report should be generally sufficient in those instances where lands have such small value. In our opinion, obtaining more than one appraisal as a general practice on low-value rights-of-way results in unnecessary appraisal costs.

Bureau officials informed us that the use of more than one appraiser on low-cost land was the result of the State highway commission's policy of using a local fee appraiser in every case and the State's reluctance to rely on only one fee appraisal. The State highway commission has since revised its policy and only one appraisal will be made of low-cost property. Bureau officials stated also that the reasonableness of Federal-aid participation in more than one appraisal fee, if claimed by the State, would be determined by the individual circumstances in each case.

Need for State manual of right-of-way procedures

The State of Wyoming did not have an adequate written manual of right-of-way policies and procedures setting out the minimum acceptable information required of appraisers in their appraisal reports. Furthermore, in our opinion, the Bureau of Public Roads had not materially assisted the State in this matter by apprising it of the information which should have been included in appraisal reports if such reports were to properly support State right-of-way costs included in claims for Federal-aid reimbursement.

The Bureau believes that it effectively assisted the State by reviews, conferences, and suggestions pertaining to various right-of-way activities. As indicated in the following section of this report, Bureau reviews of State claims did not result in improvement of documentation in support of the claims, and the varied and often inadequate information contained in appraisal reports leaves open to question the effectiveness of the Bureau's assistance to the State. We believe that the lack of written criteria relative to appraisal reports accounted in significant part for the deficiencies in appraisal reporting previously described in this report. In January 1960, the Bureau issued general guidelines for the preparation of sound appraisal reports. These guidelines should contribute substantially to the improvement of appraisal reports and aid in correcting many of the types of deficiencies previously described.

The Bureau's regional engineer advised us that the Wyoming Highway Department was preparing an appraisal manual that would contain detailed instructions on appraisal procedures and it was expected that the manual would be issued in the near future.

Need for shift in emphasis in Bureau review of State right-of-way appraisal practices

The Bureau's division appraiser in Wyoming has concentrated primarily on the settlement of specific State claims rather than on a broad and critical overall evaluation of the State's right-of-way policies and procedures. While the detailed reviews of claims which were not fully supported was apparently desirable, the Bureau had not adequate concerned itself with the causes which contributed to the deficiencies. As a result, the State continued to submit unsatisfactorily documented right-of-way claims to the Bureau for reimbursement.

The Bureau's Wyoming division employed an appraiser in October 1957. Since the date of his employment he has primarily reviewed right-of-way claims submitted by the State. These reviews generally consisted of a parcel-by-parcel evaluation of the payments made by the State with recommendations for reimbursement or disallowance. Although the division appraiser was critical of State appraisals, his reviews were made in connection with specific claims and were not intended to serve as a review of State procedures. The State was not, as a general rule, informed in writing of inadequately supported right-of-way claims.

Instructions promulgated by the Bureau's Washington office on April 17, 1958, state:

"In reviewing copies of the various reports received here it appears that the field right-of-way men are spending more time than necessary on the details of individual transactions and insufficient time on the broader supervisory aspects of the right-of-way work. * * *"

"The Bureau right-of-way personnel are limited in numbers. They do not have the time nor is it desirable, where they have full knowledge of the effectiveness of State employees making appraisals, to review each and every transaction which the State makes * * *."

Division office officials stated that the current parcel-by-parcel review of right-of-way claims was necessary because of inadequate documentation and support on the older State right-of-way claims. These claims, they stated, were supported by appraisals which were made when the State was not experienced in the acquisition of rights-of-way and did not have a well-organized right-of-way organization. They stated further that they had made every effort to clear up the older State claims for Federal reimbursement while working informally with the State on a day-to-day basis to improve the State's procedures. They believe that better results are obtained from this method than from a formal criticism of State procedures and rejection of claims for lack of support. We were advised that the detailed review would be discontinued as soon as the Bureau has full confidence in the State's procedures.

Considering the inadequacy of the support for State right-of-way claims and that right-of-way acquisition was new to the State, the review of every claim by the division appraiser was perhaps justified during the period covered by our review. We believe, however, that possible benefits derived from these reviews were not fully exploited. The end product of the division appraisers' reviews should have been written reports to the State, describing inadequacies in appraisals and the lack of support for payments, with recommendations for improvements. All claims not properly supported should have been returned to the State since it is the State's responsibility to support the right-of-way claims. Although the support for more recent right-of-way claims is greatly improved, we do not believe that it is completely satisfactory. In our opinion, the informal approach used by the division office has not produced the desired results.

OTHER OBSERVATIONS CONCERNING STATE RIGHT-OF-WAY CLAIMS

The following additional observations were made concerning State right-of-way claims in the States of Wyoming and New Mexico.

Rights-of-way acquired prior to authorization date

The State of New Mexico has acquired rights-of-way on two Federal-aid projects prior to the date on which Federal-aid reimbursement was authorized.

The Federal-Aid regulations, section 1.11(a), provide:

"Federal participation in the cost of rights-of-way acquired by a State or political subdivision thereof shall be restricted to the costs of rights-of-way actually acquired and dedicated for highway purposes subsequent to the date of approval or acceptance of the program which includes the project for which such costs are incurred * * *."

Bureau policy statements have further amplified the Federal-Aid regulations as follows:

"Under Federal law and regulations, participation of Federal funds is permitted in right-of-way and property damage costs incurred by the States for highway projects financed in whole or in part with Federal funds under the circumstances and to the extent set forth below:

"(1) When such costs are actually incurred subsequent to the date of authorization to proceed with the right-of-way portion of a project which has been approved by Public Roads under established program procedures * * *."

Program approval for project No. I-101-1(3) was obtained by New Mexico from the Bureau's Washington office on October 31, 1956. At that time authorization to proceed with the acquisition of rights-of-way was concurrent with program approval. The same or similar restrictions as those quoted above were in effect at that time. Easements for five parcels on this project were acquired 1 or 2 days prior to the program approval date. The State's right-of-way voucher was audited by the division office in May 1959 and was paid in August 1959, but the cost of rights-of-way acquired prior to authorization was not disallowed. Federal participation in the five parcels amounted to \$44,647.

The acquisition of rights-of-way for project No. F-026-1(3) was authorized by the Bureau effective December 31, 1958. The memorandums of agreement and warranty deeds for two parcels on this project were dated 8 and 13 days prior to the authorization date. The Federal share of the two parcels on project F-026-1(3) is about \$10,500. The State had not submitted a claim for reimbursement on this project at the time of our review.

We were advised by the Bureau's administrative manager in New Mexico that he had considered right-of-way costs to be incurred as of the date that the State paid the right-of-way voucher. After we discussed this matter with the Bureau's division engineer, he instructed the State highway department in writing that the Bureau would accept the date of an easement or deed as the date of conveyance of an interest in the land and that all claims for acquisitions made after August 25, 1959, should show the date of the easement or deed on the right-of-way certificate.

Bureau officials informed us that an agreement had been reached with the State of New Mexico in August 1957, whereby the Bureau would consider the date on which the State actually paid the grantors to be the date on which the State acquired particular rights-of-way. They stated that the State of New Mexico had acted in good faith and in accordance with their agreement with the Bureau and that, for this reason, the Bureau would be most reluctant to seek reimbursement from the State.

We believe that the costs of the seven parcels concerned are ineligible for Federal participation under the provisions of the Federal-Aid regulations and Bureau policy statements. It would appear that the principal purpose of the restriction in the regulations is to provide for active Bureau participation and review of all phases of State right-of-way acquisition. The purpose of the regulation, in our opinion, is defeated where all of the essential acquisition procedures are carried out by the State before Bureau authorization.

In its comments on our audit report to the Congress on review of the Federal-aid highway program in region 2, Hagerstown, Md., (transmitted December 14, 1959), the Bureau stated that:

"* * * the date of passing title does not itself control the question of the time of incurring costs for purposes of Federal reimbursement. Rather, the date on which the State either pays or obligates itself to pay is controlling."

This interpretation of the Bureau's regulations, however, had not been promulgated as a bureauwide operating procedure. The cited right-of-way transactions entered into by New Mexico indicate that the State was obligated to pay for the rights-of-way in some instances, but the Bureau's decision on the eligibility of the costs for Federal participation was based on the fact that the State had not actually paid for the rights-of-way acquired.

In the interest of enabling the Bureau to effectively review State right-of-way acquisitions and of promoting consistency in the application of the regulations governing eligibility of right-of-way costs, we have previously recommended that the Administrator establish as an operating procedure, for bureauwide application, the controlling factors to be considered in determining the date at which right-of-way costs become eligible for Federal participation. In April 1960, the Bureau issued instructions concerning the factors that should be considered in determining the date of eligibility of right-of-way costs for Federal participation. We suggested that the questionable eligibility of the right-of-way acquisitions in New Mexico be reviewed in the light of these controlling factors. The Bureau stated that it would review the right-of-way acquisitions in the light of the April 1960 memorandum but would also consider factors controlling at the time the subject parcels were acquired.

Right-of-way vouchers not supported by a tabulation of all appraisals

Bureau policy provides that any progress voucher for reimbursement of right-of-way costs shall be supported by a tabulation of all appraisals containing a certification that all appraisals made have been listed and that no changes or alterations have been made in the appraisals since their preparation or submission, except as noted in the tabulation.

Right-of-way vouchers submitted by both New Mexico and Wyoming were not supported by the required tabulation of appraisals containing a certification that all appraisals made had been listed. In New Mexico, the certificate of right-of-way costs accompanying the State's voucher listed the appraisal used as a basis for negotiation but, in those cases where more than one appraisal was made, there was no listing made of the additional appraisals. In Wyoming, the vouchers submitted by the State included a list of all appraisals but did not contain the required certification.

Bureau officials stated that the required tabulation of appraisals and the certification are now being submitted as required.

Federal participation permitted for ineligible right-of-way costs

In New Mexico, the Bureau has allowed Federal participation in costs improperly submitted as right-of-way items.

The right-of-way claim submitted by the State for project No. I-040-5(5) included a payment to one owner for eight parcels in the amount of a jury award of \$5,000 plus court costs and interest of \$297. Our review of the condemnation petition disclosed that the jury award included payment for a borrow pit and haul road. The award was made in a lump sum, and the amounts applicable to the various items were not shown. Federal participation in the full amount of the payment was allowed by the Bureau. Bureau policy provides that:

"The cost of acquiring lands or interests in lands outside the normal right-of-way for obtaining roadbuilding material is not eligible for Federal participation as a right-of-way item. The cost of acquiring lands or interests in lands outside the normal right-of-way for temporary use during clearing of the right-of-way or construction is eligible for Federal participation as either a right-of-way or construction item, in accordance with State practices, subject to appropriate program approval and authorization to proceed. The cost of any lands

or interest in lands remaining as a permanent part of the highway is eligible for Federal participation as a right-of-way item."

The practice of the State of New Mexico is to exclude the cost of haul roads as a right-of-way item. However, in several instances, stipulated settlements and jury awards included payments for borrow and material pits and haul roads. The State claims on these parcels had just been submitted to the Bureau for reimbursement at the time of our review.

Division office officials informed us that the State had been advised that, in cases where borrow pits and rights-of-way were lumped together in court judgments and the judgments exceeded the State's appraisals for rights-of-way, the Bureau would participate only to the extent of the State's appraisals. They stated that the payment in question had been overlooked. The Bureau's division engineer instructed the chief highway engineer of the State on August 12, 1959, to deduct \$3,223—the difference between the jury award and the State's appraisals plus applicable interest—from the next claim on this project. This amount has not now been collected from the State.

EXHIBIT 1-F

[From report to the Congress by the Comptroller General of the United States, July 1961]

NORTH DAKOTA AND SOUTH DAKOTA

RESTRICTIVE PROVISIONS OF SOUTH DAKOTA RIGHT-OF-WAY LAW

Restrictive provisions of the South Dakota constitution, pertaining to the acquisition of rights-of-way for highway purposes, serve to discourage any program of advance acquisition of rights-of-way, with its many economic and social benefits, and appear to have impeded the progress of the Federal-aid highway program in the State. Two significant provisions of South Dakota law concern (1) lack of authority to acquire title to rights-of-way in fee simple and (2) inability of the State to obtain right-of-entry to property in condemnation prior to determination by a jury of the compensation due the property owner. As a consequence of expansion of the Federal-aid highway program and the need for expeditious completion of the National System of Interstate and Defense Highways (Interstate System), we believe that these restrictive provisions have become increasingly significant because they create obstacles to efficient highway planning and construction, thereby increasing the cost of rights-of-way obtained for highway purposes.

Most States grant their highway departments authority to acquire property in fee-simple title, or in a lesser estate, as circumstances require. In South Dakota, however, the highway department is authorized to acquire for the purposes of a road no more than an easement, while the property owner of the fee remains the owner of the land, subject to such encumbrance. As a result of this lack of authority to acquire fee-simple title, land taken under an easement in South Dakota reverts back to the original owner when it is no longer needed for highway purposes or if the alignment of the highways is shifted for any reason. The price paid for the easement, which in most cases is equivalent to the cost of a fee-simple title, is completely lost. For example, if right-of-way easements were acquired in advance, and if it became necessary to shift the alignment of the highway at some later date for engineering or other reasons, all right-of-way easements previously acquired would revert to the former owners, all payments received from the Federal Government would be reimbursed to the Government from State funds, and the State would stand to bear the full loss occasioned by the realignment of the right-of-way line. Under these circumstances, advance right-of-way acquisition and planning are both impractical and risky. If the State had authority to acquire full title, its financial investment would not be forfeited and the State would be in a position to sell or exchange unneeded land and recover at least part of the acquisition cost. We believe, therefore, that it is most essential to a program of advance right-of-way planning and acquisition for a State highway department to have the authority to acquire property in fee-simple title.

With regard to right-of-entry problems in South Dakota, unless the sale of rights-of-way is voluntary by the property owner, the State highway department can neither take nor damage the property until the owner is compensated in an

amount determined by a jury. If the State appeals the jury award, possession of the property is further delayed until a final determination is made by the State supreme court. We were informed by officials of the Bureau's division office in South Dakota that certain construction projects on the Interstate System had been delayed as long as 2 years because of the State's inability to obtain right-of-entry to properties and that the State's present policy is to ask for Federal intervention and acquisition in all cases where condemnation becomes necessary on the Interstate System.

The State of South Dakota does not appear to have made significant progress in Interstate System construction. A major reason cited in Bureau reports for the lag in construction activities were the restrictions in the right-of-way laws of the State. This delay is evidenced by the fact that, as of June 30, 1960, only 64 miles, out of a total of 678 miles on the State's designated Interstate System, were open to traffic and 92 miles were under construction. Also, at that time South Dakota had obligated only 45 percent of its fiscal year 1959 Federal-aid apportionment for Interstate System construction; these funds were made available to the State on August 1, 1957. The Bureau subsequently advised us that as of November 30, 1960, the 1959 apportionment was fully obligated and 11 percent of the State's 1960 apportionment was obligated. The 1960 funds had been made available to the State on August 1, 1958.

The State's assistant attorney general for highway matters informed us that present State statutes are conducive to long-drawn-out court appeals which result in costly delays. The State legislatures of 1957 and 1959, he stated, considered but did not enact amendments to basic right-of-way acquisition laws which would have been beneficial to the prosecution of the highway program. We believe that continuance of the existing restrictions against the acquisition of fee-simple title to rights-of-way and immediate right-of-entry to needed properties is seriously hampering the highway program.

The Bureau's regional engineer agreed that South Dakota laws pertaining to the acquisition of rights-of-way had in some instances delayed the highway program. He said that the restrictive provisions of the State laws had been discussed with State officials and that the Bureau can and does promote better legislation, informally, within the State highway department. In response to our inquiry, he stated that the Bureau could suggest model right-of-way legislation to the State only if it was requested by the State.

We have previously suggested to the Bureau that it vigorously pursue a policy of encouraging all States to enact such changes in their statutes as will promote increased efficiency and economy in the acquisition of rights-of-way. The Bureau has advised us that it has been encouraging officials of State highway departments to request State legislatures to make changes in State legislation that are desirable to highway interests. The Bureau has advised us also that it has in the past and will in the future work with the State highway departments to bring about the ultimate in right-of-way practices.

NEED FOR IMPROVEMENT IN RIGHT-OF-WAY ACQUISITION ACTIVITIES

In South Dakota, many of the deficiencies in right-of-way acquisition activities may have been minimized had the Bureau made more timely and effective reviews of the State's organization, policies, and procedures. We noted in the course of our work in South Dakota that the Bureau had not reviewed and made determinations concerning the adequacy of the State's right-of-way acquisition policies and procedures. This review was not made because of the lack of a right-of-way appraiser at the Bureau's South Dakota division office. The Bureau's division engineer informed us in June 1959 that the review of the State's right-of-way practices and procedures should have been made a year or more earlier. He stated that the review was put off when the Bureau division office lost its appraiser in the summer of 1958 and that, when a new appraiser arrived in May 1959, it was delayed again because the State had lost its right-of-way agent; also, the new Bureau appraiser was finally advised to go ahead with the review because the State had no prospects for filling the position of right-of-way agent. A report prepared as a result of this review contained findings generally similar to those disclosed by our examination. For example, the Bureau cited:

1. The need for strong leadership in the State's right-of-way division.
2. The need for an employee's training program.
3. The finding that the right-of-way division was not taking an active part in highway locations.
4. The lack of job standards for appraisers and negotiators.
5. The lack of price justifications in the files.

6. The need for a fixed-price offer in negotiations.
7. The lack of a manual of regulations, policies, and procedures for State right-of-way personnel.
8. The failure of the State to provide a quick-taking law for the acquisition of land.

We were informed that the results of the Bureau's review were discussed with the director, State department of highways. Also, we noted that the Bureau's division engineer had sent a letter to the State highway engineer informing him of the deficiencies and recommending that corrective action be taken. The division engineer's letter stated in part:

"A review completed June 25, 1959, discloses that the State of South Dakota's right-of-way organization, policies, and procedures as submitted to and accepted by the administrator are not being fully complied with, and in some respects have become inadequate to cope with the accelerated highway program. Under the circumstances, it is recommended that the State institute adequate and corrective measures in its right-of-way practices and operations for those projects for which Federal-aid funds are expected to participate in the right-of-way costs involved."

We were subsequently informed by State and Bureau officials that the State of South Dakota had appointed a chief of the right-of-way division and that an auditor, with management capabilities, was assigned full time to the State's right-of-way division. Also, in-service and on-the-job training was to be provided to right-of-way division personnel.

The Bureau's regional engineer stated that he had tried to have an appraiser assigned to the South Dakota division office at all times but had been unable to fill this position. He said that, during an 8-month period in 1958-59 when there was no appraiser at the South Dakota division office, an engineer of the division office staff was responsible for right-of-way matters in the State; during this period, on nine different occasions the regional office had temporarily assigned appraisers to South Dakota. The regional engineer indicated that, since the Bureau review of the State's right-of-way organization during June 1959, there had been improvements in the State's organization and procedures and that additional improvements were being made.

Inadequacies in appraisal reports and procedures

The appraisal reports which we examined that were prepared during 1956, 1957, and 1958, in both North Dakota and South Dakota, were inadequate and incomplete in many respects. The acquisitions selected for review included transactions for which Federal participation had been paid after audit by the Bureau and transactions for which the State intended to request Federal participation from the Bureau. The types of deficiencies in appraisal reports and procedures noted during our review are summarized below:

1. The physical characteristics and condition of the properties appraised were not completely described. One-word descriptions were generally used to identify improvements to be taken, e.g., "chicken house," "hog house," and "garage," with no indication as to the dimensions or condition of the improvements. In some instances there were no pictures of improvements or unusual features affecting the value of the property, though specifically required by Bureau operating procedures. Proper appraisal procedure would require that an adequate description of the property be included in each appraisal report.

2. No indication was given on many of the appraisal reports as to the method(s) of valuation used, the highest and best use to which the property was adaptable, or the basis or source of computations used in determining the value of land or improvements. Comparable sales data were sometimes listed in summary form, but the individual appraisal reports did not show which of the comparable sales were used to arrive at an estimate of the market value for the particular parcel appraised. Damages to remainder lands and improvements were expressed in terms of percentages applied to before-taking values without explanations or reference to factual evidence that a decline in the value of the remainder would result from severance of a part of the property. Bureau operating instructions require that appraisal reports be fully documented to support claims for reimbursement for costs of rights-of-way acquired for Federal-aid highways.

3. Appraisal reports were frequently dated as of the date they were typed but did not show the dates the estimates of value were actually made. In many instances there was no indication that the appraisal re-

ports had been reviewed by State supervisory officials before the start of negotiations, although required by Bureau operating instructions.

4. Bureau operating procedures do not permit Federal participation in the cost of any right-of-way transaction where the negotiations therefor were carried on by the same person who made the appraisal. In South Dakota, we found one instance where the same State personnel appraised and conducted negotiations for property. On project No. F-135(11), a parcel, involving part of a property on which a filling station was located, was acquired by the State on June 8, 1957, for \$16,516. The only indication we could find that an appraisal had ever been made of this property was a plain sheet of paper in the State's files, which was neither signed nor dated, setting forth certain items of land and damages with a dollar value assigned to each item. The items totaled exactly \$16,516. The State right-of-way engineer acknowledged that this sheet represented his appraisal of the property in support of the settlement and that he and one of his former employees had conducted the negotiations for the property. The payment of Federal participation in the cost of this acquisition was received by the State on May 21, 1959, after the Bureau had completed a detailed audit of the State's final claim on the project. We believe that Federal participation should not have been allowed by the Bureau in the cost of this right-of-way taking. The Bureau advised that the final voucher would be re-audited.

On the basis of a review of a limited number of appraisals prepared in 1959, it appeared that some improvement had been made in the preparation and review of appraisal reports in both States as the Bureau's requirements had become more specific. A former South Dakota right-of-way agent who had been employed by the Bureau advised us that neither Bureau nor State appraisers had much appraisal experience when right-of-way acquisition was accelerated in 1956, and he acknowledged that State appraisals made during the period 1956-1958 were lacking in narrative and generally did not meet the appraisal documentation standards now recognized as necessary by the State and the Bureau of Public Roads. The Bureau has informed us that the values determined were sound although the elements of the properties and the reasoning on which the appraiser based his conclusion of value were not always detailed in writing to the extent desirable.

We have previously suggested to the Bureau that the varied and often inadequate information contained in appraisal reports indicates the need for Bureau policies specifying the minimum standards for acceptable appraisal reporting. In January 1960 the Bureau issued guidelines for the preparation of appraisals for rights-of-way setting out the elements considered essential to an adequately supported opinion of value. These guidelines, if appropriately implemented, should provide the basis for substantial improvement in appraisal reporting and elimination of many of the types of deficiencies previously described.

Another matter concerning appraisals which we found to be in need of improvement in South Dakota was the State's method of handling and filing appraisal reports. There were no written procedures establishing individual responsibilities with respect to appraisal documents. At various times all employees of the State right-of-way office staff participated in the handling, processing, and filing of appraisals, parcel files, and other right-of-way documents. There was little systematic filing of documents; no checkout control of appraisals or other documents; no index to the files; and no specific employee who was assigned the responsibility for filing, removing from files, or refiling appraisals or other right-of-way documents. As a result of the above conditions, any examination of appraisals would be seriously hampered and restricted because the State's right-of-way office staff could not readily locate appraisals for specific projects without an extensive search. In our examination of State files, we could not be certain, even after an extensive search, that all appraisals had been found.

After we called this matter to the attention of the Bureau's division engineer, we were informed by Bureau and State right-of-way officials that the State had taken action to establish proper controls over the handling and filing of right-of-way appraisal files.

Negotiation procedures and practices should be improved

State right-of-way negotiators in North Dakota and South Dakota generally did not prepare any documentation concerning the dates of their contacts and particulars of negotiations with property owners. This practice apparently resulted from the fact that neither the States nor the Bureau had any specific

requirement that negotiations be documented. We also noted a weakness in South Dakota controls in that negotiators were permitted to deliver payments directly to property owners.

Under Bureau operating instructions, negotiations with property owners for the purchase of rights-of-way are required to be carried out by someone other than the person making the appraisal, if Federal participation is to be allowed in the cost of the rights-of-way. Bureau instructions further require that "Before negotiation or hearing in condemnation the State highway department shall secure at least one appraisal of each parcel to be acquired, or damaged * * *," and that "all such appraisals shall be reviewed by a supervisor in the State right-of-way division competent to approve right-of-way appraisals, prior to the start of negotiations or condemnation." We believe that, to provide some basis upon which compliance with Bureau instructions can be determined, the acquisition files for every parcel of right-of-way should contain a report, signed and dated by the negotiator, showing the particulars of negotiation and dates of contact with the property owner.

In South Dakota, we were informed by State right-of-way personnel that the State had not heretofore required negotiators to make reports on the dates and particulars of contacts with property owners. The exception to this, we were told, was that within the year prior to the time of our audit negotiators had been orally instructed to prepare a written report when negotiating for rights-of-way on the Interstate System, if it appeared that a case would have to be prepared and recommended for Federal condemnation.

In North Dakota, we were informed by the State right-of-way engineer that the name of the negotiator is indicated on the warranty deed because the negotiator usually witnesses the grantor's signature. However, the State's right-of-way manual does not require that information concerning negotiations be maintained in the official right-of-way records.

The general lack of negotiation information and documentation was discussed with Bureau division engineers in both States and with the Bureau's regional engineer. They agreed that the particulars of negotiations should be documented, and they advised us that corrective measures would be taken. The Bureau's Washington office advised us that, while records of negotiation are desirable and maintenance is urged by the Bureau, the absence of such records is not considered a bar to Federal participation. However, we were advised further that both States now provide that negotiators fully document their contacts with property owners.

In the course of our review in South Dakota, we were advised by a State legislative official, who was in the process of investigating possible irregularities in the State highway department, of an instance where a former South Dakota State negotiator had withheld \$3,000 from a \$10,000 right-of-way payment that had been given to the negotiator to deliver to the property owner. The negotiator made no final accounting to the State for the funds withheld, and the negotiator's use of the \$3,000 has not yet been fully explained or determined by either the State or the Bureau. The transaction concerned rights-of-way on Interstate System project No. I-90-1(3)51. We called the particulars of the transaction to the attention of Bureau officials and were advised that the Bureau's Project Examination Division would investigate the matter. We were later informed that the report of investigation by the Project Examination Division had been referred to the Department of Justice in March 1960 for further investigation, together with other right-of-way transactions of questionable propriety. Also, the Bureau advised that the practice of delivery of payments to property owners by negotiators had been discontinued in the State of South Dakota.

On the basis of our review of the matter, we believe that State control over the disposition of State funds was weakened by following the practice of permitting warrants in payment of right-of-way acquisitions to be returned to the right-of-way division for delivery to grantors by the negotiator. The control was further diminished when State employees who conducted negotiations with the grantors delivered the warrants to the grantors. We believe that proper review of the State's right-of-way practices and procedures by the Bureau should detect these weaknesses in control.

Lack of documentation supporting settlement prices

Our review of settlement made with property owners for rights-of-way acquired on selected Federal-aid projects in both North Dakota and South Dakota disclosed that in certain instances the States' bases for arriving at settlement prices paid for particular right-of-way acquisitions were not adequately documented.

In both States, appraisal figures had been changed on appraisal reports, without showing the date of changes or identity of persons making the changes, and in most instances there was no reason shown for the changes. Substantial variations between appraisal amounts for the same parcels were observed, and settlements with the owners were made without any documentation to explain the reason for the variances. Some examples of the matters noted during our review are listed below.

NORTH DAKOTA

1. Three parcels on project No. S-267(15) were acquired by Cass County for the State during calendar year 1956. Two appraisals had been made on each of the parcels. Payments claimed from the State by the county exceeded the highest appraisal in each case as follows:

Highest appraisal	County payments	Differences
\$1,339	\$4,339	\$3,000
2,250	2,850	600
2,222	3,972	1,750

There was nothing in the State's records to indicate which appraisals were used as the basis for negotiations. Also, the State files contained no explanations or justifications for the differences between the appraisals and the amounts paid. The State had not submitted a claim for Federal participation in the costs of acquiring these parcels at the time of our audit.

2. Appraisals of three parcels on project No. I-94-S(18)297, which had been made during 1958, showed that changes in valuation had been made on appraisal reports but the identity of the persons who made the changes, the dates of the changes, and explanations of the reasons for the increased valuations were not indicated.

Appraisal before change	Appraisal after change	Settlement amount	Difference (increase)
\$1,426.50	\$1,502.50	\$1,502.50	\$76.00
2,394.25	2,964.25	3,230.25	570.00
13,500.00	14,000.00	14,000.00	500.00

The State had not submitted a claim for Federal participation on this project at the time of our review.

The Bureau advised us that the cited changes in the reports were made by the appraisers to correct errors and oversights and that all changes made in future reports would be initialed by appropriate officials.

3. On project No. I-29-5(2)182, one parcel was acquired by the State on October 21, 1957, at a cost of \$13,151.50. The State appraisal used to support the settlement was originally typed showing a total of \$13,151.50, but the total had been changed to read "\$12,151.50" which agreed with the total of the individual items on the appraisal. It appeared that a mathematical error had been made initially and settlement was based on the erroneous total. At the time of our review, the State had received a progress payment which included Federal participation in the \$13,151.50 cost of acquiring this parcel.

SOUTH DAKOTA

1. Four parcels on projects No. I-90-1(3)51 and No. I-90-2(4)54 involved a taking of 38.25 acres under one ownership. Two appraisals were made: one, dated March 5, 1958, was prepared by a State-employed appraiser who assigned a valuation of \$8,300 to the total taking, including a cattle pass, and \$14,700 without a cattle pass, and the other appraisal, made by a fee appraiser, was dated July 29, 1958, and showed an appraised valuation of \$2,200 with a cattle pass and \$7,000 without a cattle pass. Settlement was made with the property owner at \$15,000 without providing a cattle pass.

There was no documentation in the State's records explaining the basis for the high settlement, considering the wide disparity between the two appraisals. Also, there was no indication that the appraisals had been reviewed by a respon-

sible State reviewing appraiser though specifically required by Bureau operating instructions. The State had not submitted a claim to the Bureau for the purchase of these parcels at the time of our review. The Bureau advised that this information would be called to the attention of the State and would be considered by the Bureau at the time of audit of the State's claim.

2. Three parcels on project No. I-90-3(6)126 involved a single taking under one ownership. The parcels were acquired by the State on March 16, 1957. The cost of the entire taking to the State totaled \$7,666.89, the owner receiving \$5,008.94 and a private concern receiving \$2,657.95 for extending a water and sewer line to the remaining property. Information on file at the State right-of-way division indicated that two appraisals had been made at some unspecified date, one totaling \$3,057.85 and the other totaling \$5,297.38. These two appraisals, however, could not be located in the State files. An additional appraisal for these parcels, dated in December 1956, made by a State appraiser placed a total valuation of \$5,577.85.

We were unable to locate any record of the negotiations for this property. Option agreements signed by the owner on February 14, 1957, showed that items were considered in negotiations which do not appear in the appraisals that were available for our review. The options indicate that the State was to extend a water and sewer line satisfactory to the owner, but the available appraisals did not include a reference to either a water or a sewer line. There was no explanation in the State's files for either the differences between the various appraisal amounts or the differences between the amount of the settlement and the appraisals. The State submitted a progress voucher and received payment for the acquisition of these parcels on July 8, 1958. At the time of our review, a detailed audit of the progress voucher had not been completed by the Bureau.

3. On project No. I-190-2(9)59, two parcels were acquired by the State on November 29, 1957, at a cost of \$9,150. State right-of-way files contained one appraisal, which originally totaled \$8,123. It was signed and dated August 13, 1957. Several valuations on the appraisal had been lined out or erased by an unidentified person or persons and the changed valuations were inserted in ink or red pencil. The net result of the changes increased the total appraised valuation from \$8,123 to \$9,350. The State had not submitted a claim for Federal participation in the costs of acquiring these parcels at the time of our audit.

4. On project No. I-190-2(9)59, one parcel was acquired by the State on February 8, 1958, at a cost of \$11,000. State right-of-way files contained one appraisal, which was dated August 7, 1957. As originally typed, the appraisal totaled \$10,560. Changes were made to the value of improvements increasing them by \$500, and the total of the appraisal was changed to \$11,000. The dates of changes, the persons making the changes, and the reasons for changes were not shown. The State's files did not contain a record of negotiations with the property owner. The State had not submitted a claim for Federal participation in the cost of this parcel at the time of our review. The State's acting right-of-way agent said that he was unable to tell us who had made the changes.

5. On project No. F-030-4(2), a parcel was acquired by the State on November 13, 1957, at a cost of \$22,043. A total of five appraisals were made on this parcel, three by State appraisers and two by fee appraisers, as follows:

State appraisal dated Nov. 2, 1956-----	¹ \$11, 439
State appraisal dated Nov. 8, 1956-----	¹ 11, 626
State appraisal dated June 20, 1957-----	22, 843
Fee appraisal dated Aug. 10, 1957-----	17, 741
Fee appraisal dated Aug. 29, 1957-----	16, 500

¹ Does not include increase made on Mar. 14, 1957, in amount of \$840 for "demolition."

While there was no record of the particulars of the negotiations on file, a written justification for the settlement price indicated that negotiations with the property owners began sometime after the first two State appraisals were made but before the third appraisal of \$22,843 was made. The State appraisal of \$22,843 apparently was used in the negotiations since the owners signed an option agreement on August 20, 1957, in which they agreed to accept a lump-sum settlement of \$22,843. The appraisal for \$22,843 did not show the source of bases for the computations used in the valuation of the property, comparable sales, or assumptions and limitations upon which the appraisal was based, and, while the parcel number was indicated, the identity of the property owners was not shown. In addition, the individual items valued in the appraisal totaled

only \$20,094.35, or \$2,749 less than the total of \$22,843.35 shown on the appraisal report.

The highest fee appraisal, dated 10 days before the option was signed, was \$5,000 less than the settlement price, and the second fee appraisal, dated 9 days after the option was signed, was \$6,000 less than the settlement price. The high fee appraisal of \$17,741, however, was made " * * * taking into consideration negotiations made and pending in acquiring said real estate for highway purposes."

The State submitted a justification and recommendation for Bureau approval of the acquisition of the parcel on November 15, 1957, 2 days after a warranty deed transferring title of the property to the State had been executed. The justification used by the State to obtain Bureau approval of the purchase cited inaccurate dates, figures, and facts as follows:

"The justification referred incorrectly to the dates of the two original appraisals, and the \$22,843 appraisal, since the justification indicated that the two original appraisals were made in January 1957 and that the \$22,843 appraisal was made in July 1957. Actually, the two original appraisals were dated in November 1956 and were amended in March 1957. The \$22,843 appraisal was dated in June 1957. The justification stated incorrectly that the \$22,843 appraisal had not included the value of two walls when in fact the appraisal included \$1,469 for the walls. The justification referred also to an estimate of the property's replacement cost for which the State paid \$25 to a contractor. Other correspondence in the State's files stated that it appeared that the contractor had been engaged by the seller of the property to make the estimate."

The State had not submitted a claim to the Bureau for the cost of acquiring this parcel at the date of our review. However, Bureau officials advised us that, in view of the approval of the purchase of the parcel by the division office, the \$22,843 settlement figure will have to be accepted for Federal participation unless fraud is shown during Bureau audit review. We believe that the extent of Federal participation in this transaction should be considered in the light of the conflicting support for the transaction rather than on the basis of an apparently uninformed prior commitment.¹

6. One parcel on project No. F-030-4(2) was acquired by the State for \$33,500 on February 21, 1959. Six appraisals were made of the parcel, four by State appraisers and two by fee appraisers. The State appraisals varied in amount from \$19,848.41 on November 8, 1956, to \$30,400 on November 10, 1958. One fee appraisal dated August 10, 1957, valued the property at \$30,370, and the other fee appraisal dated August 29, 1957, valued the property at \$21,000. The \$21,000 fee appraisal was amended to \$24,250 under date of October 14, 1957. A letter dated December 19, 1957, from the negotiator to the grantor indicated that \$30,300 was used as the maximum negotiation figure. As the highest State appraisal of \$30,400 was not dated until November 10, 1958, it appears that negotiations were being conducted with the property owner at least 11 months before the last State appraisal of this parcel was made. There was no further record of negotiations with the grantor in the State's files.

A State official advised us that in some unknown manner the attorneys for the property owner of this parcel had obtained a copy of the \$22,843 appraisal on a different parcel, previously discussed (Item 5), and, as a result, he was forced to agree to a compromise settlement of \$33,500, or about \$3,100 more than the highest appraisal on this parcel.

The South Dakota bureau division engineer stated that he has orally informed the State highway officials just previous to the compromise settlement that Federal participation in the costs of this parcel would be based on a maximum settlement of \$30,000 even if the State paid more. The State had not submitted a claim for Federal participation in the costs of acquiring the parcel at the time of our audit.²

The Bureau advised us that the information cited would be called to the attention of the States and a further examination could be made of the cases of lack of documentation to support settlement prices. The regional engineer

¹ In January 1961 the State advised the Bureau that it proposed to acquire the rights-of-way for the entire project without Federal participation and requested cancellation of its project agreement with the Bureau and return of the voucher submitted to the Bureau for reimbursement of right-of-way costs. Cancellation of the project agreement was approved by the Bureau's South Dakota division engineer on Jan. 17, 1961.

agreed that changes on appraisals should be dated and initialed by whoever makes the changes and that amounts of any arbitrary changes which cannot be substantiated will be disallowed. The Bureau advised us in February 1961 that both States had improved their procedures and would provide adequate documentation to support settlement amounts.

Settlement agreements not executed with property owners in North Dakota

In many instances the State of North Dakota has not executed settlement agreements with property owners as required by Bureau policy directives. Unless such agreements are executed and available for examination by the Bureau, it is difficult to determine the exact terms and conditions under which rights-of-way are acquired.

Amplifying instructions covering a Bureau policy statement effective as early as November 1953 expressly required that: "Adequate data * * * in support of the cost of the individual items should include * * * written agreements with the property owners as to the cost of the land taken and adjustments of any improvements. The cost of any item not covered by written agreement or court judgment would, of necessity, have to be considered non-participating." Each subsequent Bureau revision of right-of-way procedures included a similar requirement that, when right-of-way is acquired by negotiation, the complete agreement between the State highway department and the property owner should be embodied in written instruments signed by the property owner and approved by the State.

Our review of data on file in the State right-of-way division for five projects involving acquisitions of right-of-way parcels during calendar years 1956, 1957, and 1958 showed that the State did not execute any type of settlement agreement with a property owner when rights-of-way were acquired by negotiation. Consequently, there was no basis for definitely establishing the particulars of the rights-of-way acquired or determining whether the State had acquired the improvements on a specific property. At the time of our audit, the State had received final payment from the Bureau for one of the five right-of-way projects we reviewed and had received a progress payment on another. The State's claims on these two projects apparently had been audited and paid by the Bureau with no question raised as to the State's failure to obtain written settlement agreements from property owners.

The State right-of-way engineer advised us that both he and the preceding State right-of-way engineer had believed that the Bureau requirement for written agreements had been satisfied when the State obtained appraisals and warranty deeds for parcels acquired by negotiation. He said, however, that about September 1, 1959, on advice of a new Bureau division appraiser, the State developed and started to use a memorandum agreement form when rights-of-way are acquired by negotiation. The Bureau's regional engineer agreed that the State files should contain the required settlement agreements. The Bureau advised us in February 1961 that the State previously considered the deeds and/or easements as written documents of the settlement agreement but that under present practices agreements are now being executed with property owners.

Lack of control over improvements acquired in right-of-way takings

The State highway departments of North Dakota and South Dakota had not established appropriate management controls over improvements acquired in connection with right-of-way takings for Federal-aid highways. Such controls are desirable in order that all actions taken with respect to the acquisition, use, and disposition of the improvements emanate from proper authority and any salvage or rental credits subsequently realized from improvements are accounted for.

The particulars of our findings in the two States are as follows :

NORTH DAKOTA

In reviewing the disposition of improvements acquired on project No. S-357(5), we noted two instances where the State had not documented important details or actions taken regarding improvements.

(1) A garage had been acquired by the State at a cost of \$3,500. Documentation on file, however, indicated that no bids had been received when an auction was held to sell the garage. The documentation did not show the

eventual disposition made of the garage but did ascribe \$350 as salvage value to be credited to the cost of the parcel. The files also failed to show that, at the time the public auction was held, potential bidders had obtained information that the State intended to bid for the structure and, in doing so, had placed a value of \$1,000 on the building. In a report on the auction sale, the State right-of-way agent indicated that, because of this factor, other interested parties refused to bid on the garage. As a result, the State retained the building and projected a credit to project costs for only \$350.

(2) The State's files on another parcel showed that, in consideration of the payment of \$151, the grantor had repurchased both a portion of the right-of-way he had sold to the State and a part of an adjoining parcel. Documentation on file did not show that a portion of the land he repurchased included an "excellent well" for which the State had previously paid him \$1,000 as part of the settlement price.

We discussed these transactions with the State right-of-way engineer, and he directed a State negotiator to document the details in support of the transactions.

We believe that the Bureau should limit Federal participation in the cost of improvements acquired by the State of North Dakota to such net costs which are the result of normal and prudent disposition of the improvements. The Bureau subsequently advised us that the transactions would be examined on the basis of additional information furnished by the State. In the event that the information is unsatisfactory, the State will be requested to resolve the questionable items and furnish an expression as to how the State's procedures will be strengthened to eliminate recurrence of such instances as we have cited.

SOUTH DAKOTA

Our review of Interstate System project No. I-190-2(9)59, located in the Rapid City area, disclosed the following inadequacies in controls, apparent irregularities in transactions, and questionable matters of procedure concerning the taking and disposition of improvements on this project:

1. A listing of the sale of 25 separate improvements taken by the State showed that the one individual submitted a bid on 5 houses and was the successful bidder on all 5. Four of the five houses were acquired by bidding only \$1 higher than the next highest bidder. This individual bid the exact appraised sales value of the fifth house, although the appraised sales value was not shown in the advertisement for bid. A State legislative official, investigating possible irregularities in the State department of highways, subpoenaed bank records and determined that a former South Dakota State highway official had bid on these houses and had used his sister-in-law's name in the acquisition. On October 2, 1959, the State's attorney general held an investigative hearing on this matter. A Bureau division office report of the hearing stated that a former State highway official admitted that he had submitted the bid on five houses, but he denied having inside knowledge of what others bid. According to the Bureau report, it was evident at the hearing that the former State highway personnel director did have inside knowledge when he bid \$1 more than the next highest bidder on four houses and bid the appraised sales value on the fifth house.

2. Two houses advertised for bid, and later advertised for sale by auction, were missing on the day of the auction, and at the time of our review their disposition was not known by State right-of-way officials.

3. Two houses, shown by option agreements to have been taken by the State at costs of \$11,725 and \$8,750, respectively, were not advertised for sale as required by State law, and their disposition was not known by State right-of-way officials.

4. Another house on this project, shown by the option agreement to have been taken by the State at a cost of \$7,000, was not advertised for sale as required by State law because it had been repurchased by the grantor for \$100 shortly after it was acquired by the State.

5. The State records showed that owners of one property taken on this project were paid an extra \$1,000 to remove a house as part of a \$10,000 settlement. The owners failed to remove the house, and the State sold the house at auction for \$840 without advertising it for sale as required by State law. State officials agreed that the State law probably had been violated and also that the owners should not have been paid the extra \$1,000 before the house was removed. We believe that Federal participation in the cost of this parcel should be based on

the original appraised value of \$9,000, less the amount paid to the State for the building by the purchaser.

At the time of our review, the State had not submitted a claim for Federal participation in the cost of acquiring rights-of-way on this project. We submitted the particulars of these South Dakota transactions to the Bureau for investigation by its Project Examination Division. A Bureau report on the results of this investigation was transmitted to the Department of Justice in March 1960, and we are advised that the Bureau does not intend to make final determinations as to amounts due the State until further investigations by the Department have been completed.

The Bureau division engineers of both States agreed that an adequate record of the receipt and disposition of improvements taken on right-of-way acquisitions should be maintained. They agreed to call this matter to the attention of responsible State officials and advised that claims from the States for the costs of acquiring right-of-way improvements would have to be properly documented or would be cited for disallowance.

The Bureau subsequently advised us that the State of North Dakota had established an organization to maintain records of all transactions involving improvements. The Bureau stated that its division office was actively pressing South Dakota to strengthen controls exercised over improvements. Also, the practice that, at its suggestion, the State had discontinued the practice of paying landowners in advance before moving improvements.

EXHIBIT 1-G

[From report to the Congress by the Comptroller General of the United States, August 1961]

NEW HAMPSHIRE, MAINE, AND VERMONT

DEFICIENCIES IN THE ACQUISITION OF RIGHTS-OF-WAY

The procedure followed by the three States in acquiring rights-of-way have shown gradual improvement as the Bureau's requirements concerning this activity have become more specific. Prior to about 1955, many acquisitions of rights-of-way by the States of Maine and Vermont were accomplished without formal appraisals being made of the properties acquired, but Federal participation in the cost of these acquisitions was allowed by the Bureau. Bureau's officials advised us that at that time the Bureau's requirements for the documentation of State right-of-way costs were much less stringent than is present-day requirements; also, takings at that time were of low-value property. They stated that "estimates" of right-of-way values had been made by State personnel in Maine and Vermont prior to negotiations with property owners and these estimates of value were considered to be sufficient documentation. They stated further that the settlements were reviewed and audited and no evidence of impropriety in the State's acquisitions was found. It was stated that for these reasons there is no justification for reopening these projects for further examination.

In more recent years, the States have obtained formal appraisal reports as a basis for negotiations and these reports and other aspects of State right-of-way operations have shown some improvement as Bureau direction and encouragement of the States have become more definitive. We believe, however, that the matters described below indicate a need for the Bureau to obtain further improvement in certain State procedures and practices and in its own review and audit activities concerning the acquisition of rights-of-way for Federal-aid highways.

NEW HAMPSHIRE

Lack of documentation supporting settlement prices

Settlements with property owners have been made by the State of New Hampshire in a number of instances in amounts considerably in excess of valuations established in existing appraisals, without satisfactory documentation as to the basis upon which final settlement prices were determined.

Current Bureau policy requires that appraisals be made by properly qualified appraisers and that all appraisals must be reviewed by a supervisor in the State right-of-way division competent to approve right-of-way appraisals. Valua-

tions established by a competent reviewing appraiser should thereafter govern negotiations and settlements with property owners.

Negotiation for the acquisition of rights-of-way for highway purposes in New Hampshire is the responsibility of a land taking commission appointed by the Governor with advice of council (a body of five elected advisers to the Governor). According to State law, the land taking commission is not bound by valuations established in appraisal reports approved by the State right-of-way division. The State of New Hampshire's right-of-way procedures, however, as accepted by the Bureau of Public Roads, require that "When a land taking commission exceeds the appraisal, written justification must be filed with the right-of-way engineer at the time of submission of the award to Governor and council for approval * * *." In a number of instances, however, settlements with property owners were made in amounts substantially in excess of the amounts established by appraisal, without a proper explanation or documentation of the excess amounts.

The following examples illustrate several inadequately explained variations between settlement amounts and valuations established by appraisals. Except for the parcels on project No. I-93-1(4)38, the Bureau, at the date of our review, had not received a claim for Federal participation in the acquisition costs of the parcels involved. In each instance the Bureau has subsequently required that supporting documentation be provided for the amount of the settlement.

1. On project No. I-89-(13)42, there were two acquisitions on which the basis for final settlements was not adequately documented.

(a) One parcel was appraised on June 21, 1958, by a staff appraiser of the State in the amount of \$5,000. The State's files showed that on July 16, 1958, the property owner was offered \$5,000 for his property. The appraisal was typed and valuations were set forth for land, improvements, and severance damages. Pencil changes were made on the appraisal report, however, increasing the total appraisal amount to \$7,710, but an adequate explanation was not given as to why the changes were made, the date they were made, or who had made them.

On July 21, 1958, a second appraisal was made of one component of the property (a chickenhouse) in the amount of \$4,339. The cost of moving this item had been estimated in the first appraisal report at \$1,000. According to the report, "The house is constructed in a manner which would make it easy to move * * *." On the same date as that of the second appraisal, the property owner was offered \$9,010 for his property with the stipulation that he could retain the chickenhouse and another building if he moved them off the right-of-way area. In the negotiator's notebook, the component parts of the property were set out with amounts assigned to each. These amounts totaled \$9,010. Each of the component amounts in the negotiator's notebook was identical with the penciled-in valuation in the first appraisal, except for the amount assigned to the chickenhouse and an additional \$300 for loss of a sugar orchard. At this point, there were four separate amounts assigned to the chickenhouse, as follows:

1. First appraisal.....	\$1,000
2. Penciled-in increase on first appraisal.....	2,500
3. Second appraisal.....	4,339
4. Negotiator's notebook.....	3,500

The property was thereafter acquired on August 12, 1958, for \$9,010. The amounts assigned in the negotiator's notebook to the two buildings retained by the property owner totaled \$3,800. At the date of our review, no explanation or justification could be found for the final settlement which was \$4,010 higher than the initial appraisal and the owner had been permitted to retain the chickenhouse and other minor improvements.

We were advised by the Bureau's regional engineer in July 1960 that additional information had been obtained from the State to support the actions taken. The pencil insertions on the initial appraisal report were made by the State's reviewing appraiser who revised the appraisal upward in several respects, including assigning a value of \$2,500 to the chickenhouse on the basis that the State would acquire it because it was not the policy of the State to move buildings. A recognized practice in the acquisition of improvements is to compare the cost of taking improvements with the cost of moving them to the remainder land and to negotiate for settlement on the latter basis where it is obviously more economical. In this instance,

State records show that the property owner indicated a desire to have the State move the building, but the State preferred buying the entire property and having the owner salvage or move the buildings. We believe that the State's policy should be more flexible in order to accommodate such situations. Had the State been able to negotiate a settlement on the basis of moving the buildings, it appears that the cost of acquiring this parcel could have been reduced by about \$3,000.

(b) The second parcel was appraised on June 21, 1958, in the amount of \$2,720. The State's negotiators offered the property owner \$5,000 for this property, which was accepted, and acquisition was accomplished on September 29, 1958. The only justification which we could find for the increase in the settlement price over the appraisal was the following comment contained in a letter dated July 22, 1958, from the New Hampshire highway commissioner to the Governor and council: "Purchase of additional land for service road and difference of opinion as to value of sugar house and 6 acres of sugar orchard." The letter did not indicate the value of the additional land acquired or the reasons for the difference of opinion as to values. However, the Bureau has informed us that the State's reviewing appraiser made pencil revisions of various features on the original appraisal to arrive at a value of \$4,320. Subsequently, we learned that additional increases, for which no support was available, were authorized by the land taking commission to arrive at the settlement figure.

2. On project No. I-S9-1(23)10, there were two acquisitions of rights-of-way on which the basis for final settlements was not adequately documented.

(a) One parcel was appraised on October 29, 1958, in the amount of \$16,407. On November 2, 1958, another appraisal was made which valued the property at \$21,000. On December 2, 1958, the owner asked \$28,000. Settlement was made on January 20, 1959, for \$24,618 with no indication as to how this amount was derived from either of the two appraisals. We were advised by the Bureau that Federal participation would be limited to the amount of the high appraisal of \$21,000.

(b) The second parcel was appraised by two staff appraisers in the amounts of \$46,900 and \$35,000, respectively. The first appraisal was not dated. The second appraisal, dated November 6, 1958, covered only the improvements and for some unexplained reason did not include land. The negotiator's notebook indicated that the property owner was offered \$49,250 for his property but had asked \$68,872. The land taking commission recommended to the Governor that the property owner be given \$52,952 for his property. This amount was accepted by the property owner, and acquisition was accomplished on January 20, 1959.

No adequate explanation could be found in the State's files for the settlement at an amount in excess of the appraised value. The Bureau agreed that the State had not documented its files to support the settlement and informed us that, as a result of its audit, the amount by which the settlement exceeded the appraisal of \$46,900 had been cited for exception.

3. On project No. I-93-1(4)38, three parcels were negotiated and settled in excess of appraisal amounts.

(a) One parcel was appraised on July 19, 1957, in the amount of \$1,500 and was settled for \$2,000 on August 23, 1957. We could find no explanation for the settlement in excess of the appraised amount.

(b) The second parcel was appraised on July 19, 1957, in the amount of \$2,400. This parcel was settled for \$3,900 on August 23, 1957, with the following justification: "Appraiser figured loss of only two house lots at \$1,200 each. Commission considered property also decreased in value due to the taking." There was no further explanation in the files.

(c) Another parcel was appraised for \$2,500 on July 15, 1957, and was settled in the amount of \$3,000 on August 23, 1957. No explanations for the amount of settlement in excess of the appraisal amount could be found in the State's files.

We were subsequently advised by the Bureau's regional engineer that the State's reviewing appraiser submitted a statement on April 1960 justifying the increased amount of each of these takings to the satisfaction of the Bureau.

The Bureau's regional engineer agreed that the State's files were not adequately documented in all instances and that the extent of Federal participation in right-of-way transactions should be contingent upon the adequacy of sup-

porting documentation. He stated that the necessity for proper documentation had been fully discussed with State personnel who now understand that Federal participation will be limited to the extent that State actions are properly supported.

Acquisition of rights-of-way prior to Bureau authorization

The State of New Hampshire acquired eight parcels of rights-of-way on project No. I-93-3(12) prior to the date on which the Bureau authorized the State to proceed with acquisition of rights-of-way for the project. The cost of the eight parcels involved, having a total appraised value of \$133,500, does not appear to be eligible for Federal participation under section 1.11a of the Federal-Aid Regulations, dated February 21, 1957, which provide in part:

"Federal participation in the cost of rights-of-way acquired by a State or political subdivision thereof shall be restricted to the costs of rights-of-way actually acquired and dedicated for highway purposes subsequent to the date of approval or acceptance of the program which includes the project for which such costs are incurred. * * *

Bureau operating instructions further amplified the Federal-Aid Regulations as follows:

"Under Federal law and regulations, participation of Federal funds is permitted in right-of-way and property damage costs incurred by the States for highway projects financed in whole or in part with Federal funds under the circumstances and to the extent set forth below:

"(1) When such costs are actually incurred subsequent to the date of authorization to proceed with the right-of-way portion of a project which has been approved by Public Roads under established program procedures. * * *

Bureau program approval for project No. I-93-3(12) was obtained by New Hampshire on January 16, 1959. Warranty deeds were executed, transferring title to eight right-of-way parcels on this project to the State, as follows:

Warranty deed executed :	Appraised value of parcel
Dec. 24, 1958.....	\$16, 000
Dec. 31, 1958.....	65, 000
Dec. 31, 1958.....	16, 000
Dec. 31, 1958.....	18, 000
Jan. 9, 1959.....	1, 000
Dec. 24, 1958.....	12, 500
Dec. 31, 1958.....	2, 000
Jan. 6, 1959.....	3, 000
Total.....	133, 500

The State issued checks to property owners in payment for these right-of-way parcels on December 15, 1958. The State had not yet submitted a claim to the Bureau for Federal participation on this project at the time of our review.

We believe that the principal purpose of the restriction in the regulations is to provide for active Bureau participation and review of all phases of State right-of-way acquisition. The purpose of the regulation, in our opinion, is defeated where all the essential acquisition procedures are carried out by the State before Bureau authorization. We believe that the costs of the above eight parcels are ineligible for Federal participation under the provisions of the cited Federal-aid regulations and Bureau operating instructions. The Bureau has advised us that these transactions, if claimed by the State, will be reviewed in the light of governing policies and procedures.

Field reviews of State right-of-way activities not adequately documented

The Bureau's field reviews of right-of-way activities in New Hampshire were not adequately documented. As a result, Bureau auditors, in their examination of State right-of-way claims, did not have the benefit of findings which may have resulted from the Bureau reviews of State activities.

Bureau instructions to regional and division engineers, dated April 1, 1958, on the subject of documentation of actions taken by Bureau right-of-way personnel state that " * * it is important that any action taken by the regional and division right-of-way personnel be fully documented at the time the action is taken." The instructions further provide that :

"Whether the action taken consists of a spot appraisal, review of a State appraisal, inspection of property to be taken, or some other action the record should be documented with a statement of the action taken, the findings made, and conclusions reached. Such documentation will be of considerable assistance in answering questions which may arise in the future and invaluable in the audit of the project."

We believe that if these instructions were complied with they would provide for complete and proper documentation of reviews made of State right-of-way activities.

Bureau officials agreed that complete documentation should be prepared on all field reviews of State activities made by Bureau right-of-way personnel. They stated that the matter was corrected in New Hampshire with the assignment of a new division appraiser in December 1959, who was instructed to adequately document his activities. Also, the Bureau informed us that the regional office reemphasized the necessity and importance of documenting the activities and reviews made by Bureau appraisers and, in addition, each division adopted a form which is to be used in documenting the spot checking of appraisals.

Weaknesses in control over the disposition of right-of-way improvements

The New Hampshire State Highway Department has no formal written procedures in effect covering the disposal of improvements acquired incident to the acquisition of highway right-of-way. Our examination of the State's procedures disclosed the following weaknesses:

1. The prices and terms of sales made at public auctions are not properly acknowledged by signatures of the auctioneer and the State's right-of-way witness.

2. The State highway department's accounting division maintains no record of accounts receivable from sales of improvements.

3. File copies of the bills of sale are not signed. The files therefore do not contain authenticated documentation of property transfers.

We believe that complete and reliable accounting records, based on formal written procedures, on the handling of sales of right-of-way improvements are essential if State claims for Federal-aid reimbursement are to be processed accurately and promptly. Adequate State records are mutually beneficial to both the State and the Bureau in that they facilitate the expeditious audit and payment of State claims.

The Bureau has advised us that the State has corrected the cited deficiencies in procedures relating to the disposition of right-of-way improvements, except that accounts receivable records will not be established. The State believes that the volume of amounts due from sales (\$39,000 in 1959) does not warrant establishing such records. The Bureau agrees that the records would be desirable and the State will be encouraged to establish them.

MAINE

Too many appraisals on low-value property

The State of Maine has followed the practice of obtaining two or more appraisals on all right-of-way acquisitions on the Interstate System, regardless of the low value or simplicity of the particular takings. This practice may result in unnecessary appraisal costs.

Bureau policy, with respect to the number of appraisals necessary on Federal-aid projects, requires that a minimum of two appraisals be obtained on individual takings of more than \$25,000 value. One appraisal is all that is required for takings of \$25,000 or less. Bureau policy further provides that additional appraisals may be required by the division engineer in any case where he deems such action to be necessary.

State officials believed that at least two and sometimes three appraisals were necessary on all Interstate System takings in the early stages of the interstate program, in order to gain experience in this type of acquisition. The Bureau advises that the State has decided to reduce the number of appraisals to two for each parcel acquired on interstate projects: one by a fee appraiser and the other by a staff appraiser. The Bureau stated that it was not its intention to prohibit States from obtaining more than one appraisal in their efforts to assure fair compensation to the property owners and a fair acquisition cost to the State and the Federal Government.

We believe that discretion should be exercised with regard to the number of appraisals obtained and that, generally, one appraisal should suffice for property of low value. We noted that the State generally obtained only one appraisal on low-value property for those highway system projects on which the Federal share is limited to 50 percent. This is in contrast to the number of appraisals obtained for Interstate System projects, where the Federal share of cost is 90 percent.

Property owners not contacted prior to condemnation of property and commencement of project construction

According to State and Bureau officials in Maine, the Maine State Highway Commission, in many instances, did not contact property owners prior to condemnation of their property for highway use and the start of construction of highway projects. Informing the public of proposed action to be taken is contemplated by the State's approved right-of-way procedures and is a good business practice from the standpoint of promoting satisfactory public relations.

The State of Maine obtains immediate possession of property when condemnation proceedings are instituted. The State's right-of-way procedures, as approved by the Bureau, provide that:

"On or before the advertising of the project (for construction) a right-of-way agent calls on all parties at interest, informs them of the impending action and that they will be contacted for negotiation purposes * * *."

We were informed by Bureau and State officials that in many instances projects were well under construction before a State right-of-way agent made initial contacts with property owners. This practice was recognized in the Bureau division appraiser's monthly report of right-of-way activities dated October 3, 1958. The matter was also reported on by the Bureau's project examination division in a report dated October 17, 1958, which states:

"All property owners concerned are not called on by a R/W (right-of-way) agent prior to advertising of the project and advised of impending action as stated in the R/W procedures. The Bureau Division Appraiser has brought this matter to the attention of the R/W engineer on various occasions and has reported it to the regional office. His monthly report for September 1958 * * * reiterates the situation. During a visit to the Ellsworth division office of the department the negotiator advised that his workload prevents him from contacting all property owners prior to advertising and in some instances prior to initial steps of construction."

The benefits to be gained by maintaining good public relations in acquiring highway rights-of-way are self-evident. Every effort should be made by the State to contact property owners prior to condemnation of properties and the commencement of project construction. Officials of the Bureau's regional and division offices agreed that the State's practice was undesirable from a public relations standpoint.

The Bureau's division engineer in Maine has informed us that subsequent to October 1958 the Maine State Highway Commission has given the State right-of-way division 2 weeks' leadtime in which to contact landowners and is trying to increase this time to 3 weeks. In a letter dated December 1, 1959, the chairman of the State highway commission advised the Bureau's division engineer that there would be no advertising for bids on Federal-aid projects until the affected property owners have been contacted. Also, the State has agreed to contact all property owners affected by highway construction prior to condemnation of their properties. In July 1960, the Bureau's regional engineer informed us that these State policies are being followed to the letter.

VERMONT

Per diem contract with fee appraisers not conducive to adequate control of expenditures for appraisal services

The State contracted with commercial appraisers at specified daily rates to be paid by the State when the appraisers' services were required. No time limits were imposed on appraisers when their services were requested. Therefore, the cost of any particular appraisal was not determinable by the State until a bill was received from the appraiser. We believe that the reasonableness of fees paid to commercial appraisers should be subject to prior evaluation by the State.

The Bureau has advised us that the State is now contracting with fee appraisers on the basis of a fixed fee for each parcel and that the form of contract being used requires such information as will permit an evaluation of fees by the State prior to execution of the contract.

Inadequate appraisal reports

Many inadequacies were noted in appraisal reports in all three States, significant among which were the following:

1. The bases and methods used in determining values were not shown on the appraisal reports.
2. Where comparable sales data were used, the reports did not show a reconciliation of the values of comparable sales items with the subject properties.
3. Fair market values of appraisal properties involving both land and improvements were stated in lump sum amounts.
4. Appraisal reports did not contain pictures of above-ground improvements of substantial value or pictures obtained were not adequately identified.
5. The highest and best use of properties appraised was not indicated in the appraisals.

We had previously suggested to the Bureau that the varied and often inadequate information contained in appraisal reports indicates the need for Bureau policies to specify minimum standards for acceptable appraisal reporting. In January 1960, the Bureau issued guidelines for the preparation of appraisals for rights-of-way, setting out the elements considered essential to an adequately supported opinion of value. These guidelines should provide the basis for substantial improvement in appraisal reporting and elimination of many of the types of deficiencies described below.

NEW HAMPSHIRE

Appraisal reports reviewed in New Hampshire relating to the acquisition of 86 right-of-way parcels on 22 Federal-aid highway projects contained various deficiencies of which the following examples are representative.

1. A parcel on project No. I-93-3(7) was appraised separately by staff appraisers. An appraisal dated September 27, 1958, on this partial taking estimated damages in the amount of \$62,500. A second appraisal valued the identical taking at \$44,005 on October 15, 1958. In a third appraisal dated November 5, 1958, the value of the taking was estimated at \$60,655.

None of the appraisal reports contained support for the unit values used for land or for stone walls that were assigned varying unit values of from \$3 to \$7.50 a running foot. The length of the stone walls considered in the first and third appraisal was 6,560 feet. The wall length indicated in the second appraisal was only 6,120 feet because, according to the State's reviewing appraiser, this second appraiser had neglected to consider a 440-foot section of the wall. Severance damage was appraised at \$9,700 in the first appraisal and \$10,000 in the other two appraisals with no details or explanations of what was severed.

The State acquired this property on January 9, 1959, for \$62,500. At the date of our review, the State had not submitted a claim to the Bureau for Federal participation in this taking. The Bureau advised us that the State would be required to furnish explanations of the varying values assigned to the stone walls and the severance damages and that the extent of Federal participation would be determined accordingly.

2. On project No. S-23(7), the State acquired 27 parcels of rights of way at a total cost of \$18,283 in May 1957. The only supporting documentation on file at the State highway department for the prices paid for these 27 parcels was a so-called appraisal statement. This statement simply listed the properties by name of grantor and the estimated total value assigned to each. The appraisal statement was signed by two State highway department officials. The State's claim for Federal participation in the cost of these takings had not been audited by the Bureau.

The approved New Hampshire secondary road plan states that right-of-way acquisition procedures will be identical with existing procedures for other highway systems. Therefore, the acquisitions should be supported by bona fide appraisals to be eligible for Federal participation. Under the circumstances, we believe that the Bureau should reexamine, on a selected

basis, right-of-way acquisitions for secondary road projects in New Hampshire for adequacy of the supporting documentation. The Bureau has informed us that the State will be advised of its responsibility under the approved secondary road plan and will be requested to review its procedures and furnish a statement as to the manner in which right-of-way acquisitions are accomplished. Also, the Bureau stated that, if warranted, the State would be requested to indicate the action being taken to bring its procedures in line with the provisions of the approved plan.

3. On project No. I-89-1(23)10, one parcel was appraised on November 29, 1958, at \$6,500. The taking consisted of land, woodland, and a barn and sheds. The basis or source of information for unit values assigned to the components was not disclosed in the appraisal. Also, the method of appraisal was not shown. This parcel was acquired by the State on January 20, 1959, for \$6,500. At the date of our review, the State had not submitted a claim to the Bureau for Federal participation in the taking. The Bureau's regional engineer agreed that the appraisal was deficient in some respects but believed that the estimate of value supported Federal participation in the amount of the settlement.

4. Another parcel on project No. I-89-(23)10 was appraised at \$4,500. The appraisal report was not dated. The component parts of this partial taking, i.e., 400 feet of frontage, 1 acre of woodland, and severance, were listed in the appraisal report, but neither the basis or source of information for values established nor the method used in appraising the property was shown. Severance amounting to \$1,225 was explained only as follows: "Severance is based on loss of shade trees, vegetable and flower garden, and limited access." No other information was given as to how the amount of the damage was developed. At the date of our review, the State had not submitted a claim to the Bureau for Federal participation in this taking.

In December 1960, the Bureau advised that the acquisition of this parcel was in litigation and an amount of \$6,475 had been deposited with the court. According to the Bureau, the State's reviewing appraiser submitted a statement in April 1960 that supports the severance damage. Also the Bureau has stated that, at the time of settlement and submission of the claim by the State, the documentation will be fully reviewed to determine the extent of Federal participation including the amount in excess of the approved appraisal.

Officials of the Bureau's regional and division offices have advised us that the need for improvements in New Hampshire appraisal practices has been recognized by the Bureau. They stated that detailed instructions were recently issued to fee appraisers by the State and an appraisal form was adopted for use by State appraisers with a view toward improving the content of appraisal reports.

MAINE

Appraisal reports reviewed for about 60 parcels of land acquired or damaged by the location or relocation of Federal-aid highways in Maine generally did not show the basis or source of information used in estimating values. A few of the appraisal reports contained addenda showing comparable sales data, but there were no indications of how the comparable sales data were used to arrive at values established for the subject properties. We noted that (1) proper description and identification of the properties appraised were not included in certain appraisal reports, (2) pictures of above-ground improvements of substantial value either were lacking entirely or were inadequately identified, and (3) the highest and best use of properties appraised was not always indicated.

In March 1959, the State highway commission in Maine prepared an outline setting forth the minimum information to be required by the State in future appraisal reports. After the issuance of this outline, there were significant improvements in appraisal reports, but certain of the current appraisal reports continued to lack sufficient information showing how estimates of value had been established. State right-of-way officials advised us that they would continue to strive for more complete appraisal reports.

Officials of the Bureau's regional and division offices agreed that appraisal reports in Maine were not complete in all respects but stated that progress was being made by the State and that the Bureau would continue to work with the State in this matter.

VERMONT

Appraisal reports reviewed in Vermont relating to the acquisition of 30 right-of-way parcels on 15 Federal-aid projects contained various deficiencies of which the following examples are representative.

1. One parcel on project No. I-91-1(13) was appraised separately by two fee appraisers. Appraisal No. 1, dated June 1, 1957, valued the property at \$21,000. The value was stated in a lump sum. Although this taking comprised a large lot improved by a 2½-story frame dwelling and a large garage, there were no itemized values indicated for these improvements. The appraiser listed three transactions of comparable properties showing the address, selling price, and date of sale, but little effort was made to reconcile the comparables with the subject property.

Appraisal No. 2, dated February 4, 1957, valued the property at \$18,500. This value was stated as a lump-sum amount and the basis or source of information used to arrive at this value was not disclosed. The appraiser apparently spent considerable time on this report, making gross and net income computations and considering the potential use of the property as a tourist home business, but he did not relate his computations in any way to the final \$18,500 value established. Two comparable sales were listed in the appraisal disclosing the same information as in appraisal No. 1. As in appraisal No. 1, the appraiser did not reconcile the comparables with the subject property.

At the date of our review, the State had not submitted a claim to the Bureau for reimbursement of the Federal share of \$22,000 paid for this parcel. We are advised by the Bureau that our findings will be considered before Federal participation in the cost of the property is allowed.

2. On project No. SPU-028-2(2) one parcel was appraised by two fee appraisers. Appraisal No. 1, dated November 25, 1958, established a fair market value of \$26,200 for the property. The method used to arrive at fair market value was the estimated cost of dismantling, moving, and reassembling the improvements in an equally desirable location, plus the cost of the new location. Before adding the cost of the new site, the appraiser included an unexplained 10-percent contingency factor amounting to \$1,016. The sources of the values established in the report were not disclosed.

Appraisal No. 2, dated March 11, 1959, valued the taking at \$23,800. This appraisal was prepared using a "cost less depreciation" method of estimating value. The appraiser listed all the component parts of the property and assigned a value to each; however, the basis or source of these values was not disclosed in the report. An unexplained engineering and contingency allowance of 20 percent, \$3,690, was added to the values assigned to the improvements. The State acquired this property for \$27,000 on January 7, 1959.

A further point noted in reviewing the two appraisals was that appraisal No. 1 set forth an estimate for a new and equal land site of \$15,000, whereas appraisal No. 2 stated that "Appraiser considers this lot, with its present rough grading, to have a value not in excess of \$4,000." Since no information was given on either appraisal as to the procedure followed in valuing the land, we were unable to determine the reason for the substantial difference between the two appraisals. The Bureau stated that the extent of Federal participation would be determined at the time of audit and that the State would be required to furnish justification for contingencies and the basis of values assigned.

3. Three appraisals were made of a parcel on project No. F-123(10). The property consisted of land, house, and garage and involved a complete taking.

Appraisal No. 1, dated June 10, 1955, established values for the property by two methods: Replacement cost \$24,000, and market \$17,000. The appraiser did not indicate the preferred method or value or the basis or source of information for values established. Comparable sales data were not mentioned, and pictures of the aboveground improvements were not included in the report.

Appraisal No. 2, dated July 12, 1955, established a value for real property of \$23,000 and damages for moving of \$5,000 which is noncompensable. The basis or source of information for values established was not shown. The method of appraisal used and pictures of improvements were not included in this appraisal report.

Appraisal No. 3, dated July 13, 1955, set the value, for highway taking purposes at \$20,000 by an estimated replacement cost, new method. The basis or source of information for values used in arriving at the assigned value was not disclosed. The appraiser's valuation of \$20,000 included an "unwilling seller" factor, in the amount of \$4,000. The State acquired this property September 9, 1955, for \$24,000. This project had been audited and passed for payment by the Bureau division office on the basis that it was reasonably supposed judged by criteria accepted at the time, these criteria being principally the experience and judgment of the appraisers.

4. A parcel on project No. S-0313(1) was appraised May 29, 1958. The appraiser assigned damages of \$2,000 to this partial taking. The appraiser listed the component parts of this property and assigned both before and after values to each part; however, the basis or source of the information used to arrive at these values was not disclosed. Also, the appraiser listed comparable sales data which he stated had been used as a guide to arrive at the valuation of the subject property. There was no reconciliation of the comparables with the subject property. This property was acquired by the State August 8, 1958, for \$2,000. At the time of our review, the State had not requested Federal participation in the cost of this parcel.

5. On project No. S-73(1), one parcel was appraised on March 9, 1955, and damages were valued at \$1,165. The appraisal report was a form containing a list of items considered. The form was entitled "Option Breakdown." The items noted on the option breakdown for the subject property were meadow land, pasture land, culvert rights, severance, and fencing. Each item had a value assigned thereto, but the basis or source of the information for values was not disclosed. Severance in the amount of \$300 was not explained. This parcel was purchased by the State on March 25, 1955, for \$1,200. The Bureau had audited and paid the State for this secondary road plan project without review of State records, except to determine that the State had paid the amount claimed. The Bureau has advised us that the method used for estimating damages was considered acceptable at the time, and the acceptability of the valuation is indicated by the fact that the acquisition price closely approximate the appraisal. In our opinion, comparison of the acquisition price with the appraised value does not constitute an appropriate means of gaging the reliability of the appraisal. An appraised value should be based upon an adequately supported opinion of market value.

Bureau officials advise that the Bureau proposes to apprise the State in writing of any deficiencies in appraisal reports. They informed us that the State had issued a new appraisal manual and had developed appraisal report forms and detailed requirements for fee appraisers that have resulted in gradual improvement in the State's appraisal but they acknowledged that more improvement was expected.

Observations concerning Bureau reviews and audits of State right-of-way transactions

The Bureau has not made timely and satisfactory audits and reviews of State right-of-way transactions, procedures, and practices, as evidenced by the many types of deficiencies in State procedures cited previously in this report. The following conditions noted during our review further emphasize the problem:

1. At the time of our review, none of the three division offices visited had been authorized by the Bureau's regional office to audit State right-of-way claims. Bureau officials cited the need for more training as the reason why such audit responsibility had not been delegated to the three division offices. Subsequent to our review the Maine and New Hampshire divisions were delegated authority to audit State right-of-way claims, and a newly assigned auditor in the Vermont division is receiving indoctrination and training before being authorized to audit right-of-way transactions.

2. A sizable backlog of unaudited State right-of-way vouchers was on hand at the Bureau's New Hampshire division office in May 1959. The backlog consisted of paid but unaudited right-of-way vouchers over 30 days old, certain of which were submitted as early as June 1958. There were 26 projects, representing 667 parcels, involving payments to the State of \$911,000. Bureau officials agreed that there was a need for more timely audits of State right-of-way vouchers. They stated that the Bureau was in the process of clearing up the backlog of right-of-way vouchers in New Hampshire and that they have every intention of remaining current in the future. The

Bureau subsequently advised us that in October 1960 unaudited right-of-way vouchers related to 17 projects, involving 271 parcels and \$699,000.

3. Audit surveys of State procedures had not been completed in New Hampshire and Vermont at the date of our review.

The authority and requirement for audit surveys are included in Bureau operating instructions dated July 24, 1956. The purpose of the audit surveys is to point up areas where special audit effort should be concentrated in processing State claims. The Bureau has advised us that audit surveys of State procedures in New Hampshire and Vermont are contemplated in the near future.

In September 1959, the Bureau issued a program for the audit of right-of-way costs which deals with surveys of State practices, procedures, and related internal controls and with examinations of specific transactions and supporting documentation. The Bureau anticipates that the criteria established in this audit program will substantially improve the timeliness and quality of Bureau surveys and audits of State right-of-way activities.

EXHIBIT 1-H

[From report to the Congress by the Comptroller General of the United States August 1961]

MICHIGAN AND WISCONSIN

DEFICIENCIES IN THE ACQUISITION OF RIGHTS-OF-WAY

In both States, certain procedures followed and documentation available in support of the acquisition of rights-of-way for Federal-aid highways were defective. We observed that (1) appraisal reports were generally inadequate or incomplete in many respects, (2) the Bureau was not reviewing Michigan right-of-way practices and procedures, (3) Wisconsin did not have a manual of right-of-way policies and procedures, and (4) court awards in both States substantially exceeded State appraisal valuations. We believe that these matters, as described below, indicate the need for the Bureau to obtain considerable improvement in the States' procedures and practices and in its own review and audit activities concerning the acquisition of rights-of-way for Federal-aid highways.

The Bureau's regional engineer agreed that there has been a need for improvement in right-of-way organization, policies, and procedures but advised that progress was being made by both the Bureau and the States. We were also advised that many of the inadequacies in right-of-way claims that we examined during our review were believed not to exist in more recent claims.

INADEQUATE AND INCOMPLETE APPRAISAL REPORTS

In the past, appraisal reports prepared by State and fee appraisers for acquisition of rights-of-way in Michigan and Wisconsin were inadequate or incomplete in certain respects to support amounts paid by the States to grantors. The appraisal reports generally lacked essential information concerning the bases on which values were established for land, improvements, and damages to remaining lands. More recent appraisal reports showed improvement in supporting data. We previously suggested to the Bureau that the varied and often inadequate information contained in State appraisal reports, as in the situations described below, indicated the need for Bureau policies to specify minimum standards for acceptable appraisal reporting. In January 1960, the Bureau issued general guidelines for the preparation of sound appraisal reports, which should aid substantially in improving the content of such reports.

STATE OF WISCONSIN

Procedures adopted by the Wisconsin State Highway Commission provide that the commission may order all or certain parts of the required land or interests therein to be acquired for the commission by a county highway committee or by a board, commission, or department of the city within whose limits the land is located.

Appraisal reports of property acquired by municipal boards or county highway committees prior to September 1957 were generally brief and did not indicate the basis and factors used by the appraiser in his evaluation. There was some evidence of improvement in appraisal reports prepared during 1958 and 1959. The Bureau advised us that, although the reports were lacking in certain respects as to documentation, the Bureau was of the opinion that full value was received for acquisition of rights-of-way by county highway committees; further every effort was being made by the Bureau to encourage better documentation of appraisals.

A parcel on project No. U-4805(9), consisting of a residential and business lot improved with a frame dwelling, was acquired on January 11, 1956, for \$9,500. Three contract appraisers had valued the property at \$8,718, \$9,015, and \$9,550. On the basis of the contract appraisals, a city public works committee established an offering price of \$9,095, with a provision for an added amount not to exceed \$905 to cover unforeseen items or contingencies. The certificates of appraisal rendered by the contract appraisers merely stated lump-sum values for the land and dwelling without offering any substantiating evidence of comparable sales or other justification of values.

Rights-of-way on project No. F-017-2(11), consisting of 66 parcels was acquired by county highway commission during the period from February through June 1954. Contract appraisals were obtained on eight parcels. These appraisals were merely opinions unsupported by adequate evidence of value. For example, on one parcel, a contract appraisal stated:

Take building and 3.51 acres of land:	
Today's value-----	\$12, 524. 44
Value after take-----	5, 175. 00
Damages-----	7, 349. 44

Bureau auditors recognized the lack of adequate supporting data on this parcel, and in January 1959 the damage item was reduced by about \$5,800.

The remaining 58 parcel appraisals were the joint effort of members of a county highway committee. The committee appraisals were likewise mere opinions without indication of the basis and factors used in evaluating the property. As an example, agricultural land was uniformly valued at \$200 an acre without evidence of comparable sales. The Bureau made deductions on 11 of these parcels.

The same general condition concerning lack of support for appraised values existed on rights-of-way acquired by a municipal board or county highway committee between 1952 and 1957 on projects Nos. US-0352(6), U-5601(4), S-1253(2), and S-0121(9). The Bureau approved the State claims for reimbursement of right-of-way cost on all of these projects, except for certain deduction on one project. The Bureau advised us that it considered there was generally sufficient support for the payments on projects Nos. US-0352(6) and U-5601(4). The Bureau also stated that, since the other projects were constructed under the secondary road plan (23 U.S.C. 117), the certificate of the State that the projects were completed under its approved plan was accepted without audit, except for the very limited audit prescribed for secondary road plan projects.

The Bureau's division engineer informed us that he would encourage the State to improve the quality of appraisal reports generally and, in particular, the adequacy of the valuation basis. The division engineer stated, however, that he was not too much concerned with the appraisal reports submitted by the county highway committees, because those appraisal reports represent the combined opinion of from three to five individuals, based upon their knowledge of local land values. The division engineer and his staff believe that the results of the committee actions are generally sound. We believe that the basis of such actions should be included in the appraisal reports to permit a considered judgment that the appraisal processes followed were complete and proper in particular circumstances. The Bureau advised us in October 1960 that the State had adopted new appraisal forms which the Bureau believed would provide for a more uniform application of Bureau appraisal policies and result in a comprehensive coverage of required appraisal reporting essentials.

STATE OF MICHIGAN

For Michigan project No. I-96-2(1)120, right-of-way consisting of 52 parcels was appraised independently by two State employees during the latter part of 1956. Generally, both appraisers valued the takings on a before-and-after basis, but there was no indication of how the appraisers arrived at either the "before" or the "after" values. A review of the appraisals by a Bureau engineer, before the State started negotiations with property owners, disclosed the following deficiencies in the preparation of the appraisals:

1. The comparable sales used in making the appraisals included seven recent sales, but the appraisals were not referenced to any of the individual comparables to indicate superior or inferior features or the basis of valuation.

2. The appraisals were not consistent in content or breakdown of acreage for easement, severance, excess taking, or right-of-way to be acquired.

3. Apparent errors in legal descriptions and variance in computed areas were prevalent in the appraisals.

Despite the appraisal deficiencies revealed in the review by the Bureau engineer, the State was not required to furnish corrected appraisal reports to obtain Federal participation in the cost of the rights-of-way.

The regional engineer agreed that the appraisals for this project were sketchy and not up to present-day standards. However, he also stated that the Bureau auditor, with the assistance of the Bureau division appraiser, reviewed the actual properties, and, on the basis of this review and added information furnished by the State for three parcels, the auditor accepted the appraisals as support for payment.

The acquisitions of 185 parcels included in Michigan projects Nos. I-94-2(4)27, I-94-3(18)113, and I-96-2(5)90 were supported by appraisals using a before-and-after approach to valuation. As evidenced by the examples summarized below, the appraisals did not always indicate the bases and factors used in estimating values of properties either before or after taking.

1. The standard appraisal report in use by the State included a requirement that the appraiser list and describe fully each comparable property considered. This requirement was almost entirely ignored in the appraisals we reviewed. For example, an appraisal report dated August 5, 1957, for one parcel on project No. I-94-2(4)27, listed two comparable sales that were considered by the appraiser, but no further descriptive information was included concerning the comparable sales or the degree of comparability of these sales to the property acquired, such as whether the appraised property included superior or inferior features when compared with the comparable sales. The Bureau subsequently advised us that a separate book of comparable sales was prepared by the appraisers in which all sales of property in the general vicinity of the project were recorded with pictures and complete descriptions, which was used by the appraisers in determining comparables on this project.

2. The State's standard appraisal report required a description of buildings taken and the use of present cost of replacement less depreciation, including obsolescence, as the valuation approach. In the appraisals we reviewed, the source of cost information and depreciation was omitted from the reports. For example, an appraisal report dated May 3, 1958, for one parcel on project No. I-94-3(18)113 included the description of buildings as "Dwelling, 15-room, 2-story frame, not modern just fair cond.-dep. \$9,-175.60." Further comment concerning the basis of this valuation of the building was not included in the appraisal report. The regional engineer agreed that the appraiser did not justify the value of the building by this appraisal approach, but stated that the appraiser also used the market approach and supported it with several comparable sales and the estimate of the "before" value was based largely upon this latter approach.

3. Compensable severance damages, whether through loss of access, proximity to buildings, change in highest and best use through change in size and shape, etc., were inadequately supported. Many damage appraisals were opinions expressed as percentages of damage without an explanation of how

the percentages were derived. As an example, an appraisal of one parcel on project No. I-96-2(5)90, dated April 25, 1957, included damages as follows:

50-percent severance and separation, 120 acres cropland-----	\$6,600
30-percent severance and separation, buildings-----	2,700
Total-----	9,300

Comments concerning the reasons for the percentages used as representing the amount of damages were not included in the appraisal report. A second appraisal report for this parcel attempted to justify the severance damages by relating the appraised property to comparable property. However, the appraisal report did not indicate the degree of comparability of the properties.

4. In an appraisal report, dated January 23, 1958, for a parcel on project No. I-94-2(3)71, proximity and grading damages of 100 percent were estimated for a homesite and improvements valued at \$6,850. The construction plans for the project indicated that the grade of an approach roadway to a structure crossing the interstate highway would cut off access to the improvements; damage was estimated to be so severe as to amount to a "total" take. The Bureau approved Federal participation in the cost of this taking without determining why the State allowed the owner to retain title to and possession of the improvements and the homesite after the State had in effect purchased this property.

At the time of our examination, we observed that the dwelling was still occupied by the property owner and that damages appeared to be less severe than indicated by the appraisal. Construction of the approach roadway left the dwelling about 40 feet distant instead of adjacent to the roadway, and the roadway grade was level and did not bar access to the remaining property. The Bureau's appraiser agreed that proximity and grade damage was less severe than had been estimated and the owner appeared to be better off than before the taking. Apparently, actual construction varied substantially from the planned construction to the benefit of the property owner. The regional engineer advised us that the State was requested to furnish complete justification for the transaction and that, although payment of the State's claim for this parcel was made on a progress voucher, final adjudication of the entire claim for this project would not take place until the final voucher was submitted for payment and was audited by the Bureau. As a result of the division engineer's request, the State reduced its estimate of damages to \$4,700, which the Bureau considers adequately supported by comparable sales.

The appraisals cited above as examples were prepared during 1957 and 1958. We're informed by the original engineer that these appraisals were accepted in support of Federal reimbursement of State claims on the basis of the competence of the appraisers and a lack of leadtime for right-of-way acquisitions in getting the interstate highway program underway. The State's present appraisal instructions require the justification and explanation of the reasoning used in arriving at assigned values and appear to provide a satisfactory guide for preparing sound appraisal reports. Our review indicated that the more recent appraisals were being made in accordance with these instructions. The Bureau has advised us that the appraisal forms now in use in Michigan follow its guidelines for appraisal reports issued in January 1960 and that it now considers the State's appraisal reports generally satisfactory.

LACK OF BUREAU REVIEW OF MICHIGAN RIGHT-OF-WAY PRACTICES AND PROCEDURES

Bureau operating procedures require the division engineer to maintain liaison with the State highway department to determine whether the practices and procedures followed by the State and its subdivisions in acquiring rights-of-way conform with those accepted by the Administrator. The division office purportedly complies with this requirement through the daily routine reviews by division office appraisers of the various aspects of State right-of-way programming, appraisal, and acquisition. Our review of division office operations in Michigan concerned with right-of-way activities, however, disclosed that Bureau operating procedures were not being fully implemented.

The stated policy of the Bureau is that the division engineer shall notify the State highway department if at any time he feels that the practices and procedures as submitted by the State are not being followed or have become inadequate. Without performing a systematic review, it is doubtful whether the division engineer is able to determine noncompliance with or inadequacy of the accepted State practices and procedures. Bureau appraisers were not reviewing the State practices and procedures through field tests and inspections. Instead, almost complete reliance was being placed upon desk reviews of State programs, manuals, appraisals, etc. The Bureau's division office employs two appraisers. We observed that within a 5-week period one appraiser made a 2-day field visit, while the other appraiser was present in the division office during the entire 5 weeks. Reports of appraisal activities prepared by the division office appraisers for a period of 2 years did not contain any indications of field verification of State practices and procedures. These reports also were not in sufficient detail to identify specific problem areas that might require the attention of the regional or Washington offices.

We were advised that the regional right-of-way engineer did not make extensive use of the division office reports on appraisal activities and that he relied primarily upon field contacts with the divisions and State offices. We were advised further that more emphasis would be placed upon a continuing review of the State's actual operations as compared with those prescribed by its manual of policies and procedures, with a systematic review to be made once each year. The Bureau informed us in October 1960 that the division appraisers were then making field reviews to evaluate the State's right-of-way practices and procedures that reports on these reviews are required from the appraisers after each field trip.

Bureau operating procedures state that a right-of-way representative from the State and from the Bureau should make inspections in company with the location and design engineers at both the preliminary and the final stages of location of highways. In addition, the State is required to notify the Bureau of proposed changes to real property improvements in sufficient time to afford Bureau representatives an opportunity to examine the improvements before alteration or removal from the right-of-way. We were informed by the Bureau division office appraisers that these inspections of right-of-way locations and real property improvements were not being made. Also, the State was not requested until late in 1958 to conform with the Bureau requirement that it be furnished notice prior to disposition of improvements. We were advised by the Bureau in 1960 that it was then current practice for division appraisers to accompany State and Bureau engineers on preliminary inspections of projects for the purpose of providing advice on real estate values.

NEED FOR MANUAL OF RIGHT-OF-WAY POLICIES AND PROCEDURES IN WISCONSIN

At the time of our review, the Wisconsin State Highway Department had not prepared a manual of its right-of-way policies and procedures. Information submitted to the Bureau on September 12, 1957, concerning the State's right-of-way organization, policies; and procedures contained the following statements:

"Many separate regulations and procedural memorandums on right-of-way matters have been issued over the years and many have been subsequently revised in one or more respects. As a result, at this time there is no up-to-date collection of pertinent memorandums which reflects satisfactorily the existing practices and procedures.

"Revisions are in process which will take into account adjustments which may be required under the Bureau's policy and procedure memorandum of December 31, 1956. As these memorandums are issued copies will be submitted as supplements to this submittal. It is proposed to make this statement part of the revised policy and procedure."

Subsequent to the submission of this statement, a draft of a proposed manual of right-of-way organization, policies, and procedures was prepared but it had not been approved and published. At the time of our review, we found no evidence that further progress had been made by the State toward completion of the manual or that action taken by the Bureau to encourage the State to expedite completion of a manual had been effective.

In 1958 the Bureau's division appraiser made a review of appraisals submitted by fee appraisers and found that the appraisals varied widely in support and documentation. The division appraiser suggested to the State that differences in appraisals could easily be resolved if a standard format were prescribed for use of fee appraisers and proper instructions were issued. At the time of our examination the State had taken no action on this recommendation.

We believe that a manual of State right-of-way policies and procedures is a necessary tool for adequate administrative direction of right-of-way operations and that it would provide a basis for more uniform application of procedures and preparation of appraisals by both State and fee appraisers. Bureau officials agreed that a manual was necessary and stated that they would further encourage the State to develop and publish one.

We were advised that both the Bureau and the State believed that the manual should incorporate the features outlined in proposed legislation, that was enacted in the legislative session of 1959-60, and for that reason the State delayed immediate action toward completion of the manual. Upon enactment of the legislation, the State highway commission initiated the preparation and distribution of a manual of policies, procedures, detailed instructions, and forms to be used in its operations under the new law.

COURT AWARDS SUBSTANTIALLY HIGHER THAN STATE APPRAISALS

Federal participation has been allowed in condemnation cases for rights-of-way in the States of Michigan and Wisconsin in amounts substantially in excess of the States' appraisal valuations of property.

In Wisconsin, court awards in 72 condemnation cases averaged 52 percent above the State's offers during calendar year 1958. County judge awards in 35 cases located in Ozaukee County exceeded the State's offer by an average of 67 percent. The county judge awards had been appealed to a higher court.

In Michigan, court awards in 23 cases closed in 1958 and 1959 averaged about 65 percent over the State's offer. For some individual takings, there were substantial variances between State offers and court awards. As an example, on one project the court awarded the landowner \$24,000 as compared with the State appraisal of \$4,600. The State attorney general's office stated that there was no basis for appeal since the award was within the range of the testimony and all testimony was legally admissible.

In a digest of new developments in right-of-way policies and procedures prepared by the Right-of-Way Division of the Bureau's Office of Engineering, the following statement is made:

"However, if it is found that the settlements made by a jury award procedure are very costly to the general public and are not found to be in the public interest, the Federal Highway Administrator can prescribe that Federal-aid participation be based on a more reasonable amount, or he may withdraw his approval of the right-of-way procedures being followed by the State until these procedures are satisfactorily corrected."

At the time of our review, we were advised that Bureau operating procedures did not make any provision for implementing this policy; however, the regional engineer advised that the Washington office was requested to furnish guidelines and procedures to be followed where awards appear to be excessive.

We recommend, in our report on review of the Federal-aid highway program in region 8—Portland, Oreg., October 1959 (B-118653), that the Federal Highway Administrator clarify the policy on the matter of Federal participation in right-of-way costs in the event that court awards are substantially in excess of appraisals. We recommended further that operating instructions be issued for implementing such a policy. In May 1960, Bureau policy relative to court awards in condemnation cases was restated and guidelines for administration of the policy were issued. The Bureau does not question the judicial action of State courts but does require assurance that the State's cases were soundly presented and that the State reasonably exercised all appropriate legal procedures, such as motions for new trials or appeals.

EXHIBIT 1-I

[From report to the Congress by the Comptroller General of the United States, February 1962—Tennessee]

INADEQUACIES IN THE ADMINISTRATION OF RIGHT-OF-WAY ACQUISITIONS

Certain inadequacies existed in the State's administrative policies, procedures, and practices relative to the acquisition of rights of way for Federal-aid highways, which evidenced a lack of control by both the State of Tennessee and the Bureau. These inadequacies were of significance in that they created doubt in many instances that payments made by the Bureau to the State were appropriately supported.

Of particular significance, we believe, was the inadequacy of the State's appraisal reports which are the basic support for prices paid for highway rights-of-way. In the absence of adequate appraisal reports, we do not believe that there is a reasonable basis upon which a State's right-of-way costs can be considered eligible for Federal participation. In this connection, the Federal Highway Administrator in May 1957 emphasized to Bureau officials that, where a State supports a claim for reimbursement with inadequate appraisals, the Bureau should return the claim to the State and require that it be fully supported. The Bureau had not fully adhered to this policy in the State of Tennessee. After review and audit, the Bureau had allowed Federal participation in many inadequately supported transactions.

Our findings regarding appraisal procedures and other State and Bureau right-of-way matters are presented below. The Bureau has advised us that our findings will be given consideration in connection with its examination of specific projects called to its attention and in the Bureau's audit of vouchers on other projects.

INADEQUATE APPRAISAL REPORTS

Many of the State's appraisal reports which we examined did not contain any information as to the appraisal method used in developing values for land, improvements, and damages and lacked specific information as to the bases and sources of information from which values had been developed. One of the factors contributing to this lack of information was the brief appraisal report form in use prior to 1958 which did not require the appraiser to set forth any corroboration of or explanation concerning the basis on which he had determined valuations for land, improvements, and damages.

The Bureau was aware of the inadequacy of the State appraisal reports prepared prior to 1958. According to the Bureau, the reports were accepted in support of State claims for reimbursement of the Federal share of the costs of rights-of-way because the State had proceeded with the projects in good faith and to the best of its ability and because the appraisal reports provided a basis for establishing guides to fair market values. The State revised its report form in December 1957 and again in March 1958 to require more detailed information to support appraised values.

Our review of selected appraisal reports prepared after the report form was revised indicated the need for further improvements in the preparation of such reports. Certain appraisal reports did not fully support the appraised value in that the reasons were not shown for assigning unit values to the land acquired which substantially exceeded the unit values indicated for the whole property. Other appraisal reports showed that damages to the portions of the land not taken were incorrectly assigned to, or were based upon, the portions of the land acquired, which resulted in erroneous allowances of damages. While appraisal reports on numerous properties included data concerning sales of other properties, the appraiser did not show the degree of comparability between the property being appraised and the properties selected for comparative purposes.

The Bureau's regional engineer advised us that the State's appraisals would be reexamined on a test basis and that, where found to be inadequate, he would suggest that reappraisals be made or would take other appropriate administrative action. The Bureau also advised us that it expected further improvement in appraisal reports as the result of action that had been taken by the State to expand and strengthen its right-of-way organization.

USE OF JOINT APPRAISAL REPORTS

Many appraisal reports obtained by the State in 1958 and 1959 on four projects that we reviewed appeared to have been prepared either jointly by two State appraisers or by one appraiser and endorsed by the other. In certain in-

stances, one appraiser merely signed a copy of the first appraiser's report. In one instance the appraiser signed a blank appraisal form, apparently to indicate his concurrence in the value estimated by the other appraiser.

In our opinion, joint appraisals, or purportedly independent appraisals prepared through collaboration, do not represent the independent judgment of either appraiser. Further, where two or more appraisers prepare joint or cooperative appraisal reports, appraisal costs are incurred without obtaining the benefit of the independent judgment of each appraiser. Where two appraisals are made for the purpose of obtaining a comparative evaluation of the property to be acquired, the Bureau should require that the two appraisals be prepared independently if the cost of the appraisals is to be eligible for Federal participation. We previously suggested that the Bureau restate its policy concerning the conditions under which two or more appraisals are necessary, to include the requirement that such appraisals represent the independent judgment of each appraiser.

In December 1960, the Bureau restated its policy to require that appraisals be independently prepared by State or fee appraisers. In November 1961, the State advised the Bureau that separate and independent appraisals had been obtained since the latter part of 1959 and that State right-of-way employees were thoroughly familiar with its policy in this regard.

NEED FOR GUIDELINES FOR APPRAISER QUALIFICATIONS

The Bureau has not issued guidelines to be followed by the States in establishing qualifications for appraisers and reviewing appraisers used in the acquisition of rights-of-way for Federal-aid highways. As a result, State submissions to the Bureau concerning the required qualifications of such individuals have generally been too vague to permit a judgment as to the adequacy of State requirements.

Bureau policy requires that appraisals prepared by qualified appraisers be secured with respect to each parcel acquired or damaged and that each appraisal be reviewed by a State employee competent to approve appraisals. The function of the reviewing appraiser is to determine the fair market value of each parcel, by consideration of appraisals and other available information, to serve as the basis for negotiation with the property owner. It is the policy of the Bureau to place considerable reliance upon the determinations of fair market value made under this procedure. If the reviewing appraiser determines that an appraisal is a competent and reasonable measure of fair market value and he so indicates by signing the appraisal, no further documentation is required by the Bureau to support the settlement amount unless it substantially differs from the appraised amount. Under this policy, it is essential that the State have qualified personnel serving as appraisers and reviewing appraisers.

Since December 1956, the Bureau has required each State to submit for review a statement of the qualifications required of appraisers and, since December 1960, has required a similar statement with respect to reviewing appraisers. In its statement submitted in 1957, the State of Tennessee informed the Bureau that its staff appraisers were required to have sufficient experience to be conversant with property values and that fee appraisers were to be well qualified, preferably persons engaged in the real estate or appraising business. Subsequent submissions by the State have been similarly vague with respect to the qualifications required of appraisers.

In June 1961, the Bureau suggested that the State establish minimum education and experience requirements for both appraisers and reviewing appraisers. The Bureau has taken similar action with respect to statements of appraiser qualification requirements submitted by several other States for review by the Bureau. The Bureau has not, however, issued any guidelines concerning the specific factors to be considered by the States in establishing or evaluating appraisers' qualifications.

We advised the Bureau that we believed specific guidelines would contribute to a measure of uniformity, nationwide, in the factors to be considered by the States in establishing qualifications for appraisers and reviewing appraisers and by the Bureau in evaluating the requirements established by the States. In January 1962, the Bureau advised us that it agreed with our proposal and would issue guidelines for consideration by States in establishing minimum qualifications for appraisers and reviewing appraisers.

ACQUISITIONS OF RIGHTS-OF-WAY BY POLITICAL SUBDIVISIONS NOT SUBJECTED
TO SUFFICIENT REVIEW

Acquisitions of rights-of-way by political subdivisions of the State did not appear to be subjected to sufficient review and control by either the State highway department or the Bureau.

Bureau instructions require each State to submit to the Bureau written information concerning the organization, policies, and procedures related to right-of-way activities of the State. The information submitted by the State is reviewed by the Bureau and must be accepted by the Federal Highway Administrator as a requisite for approval of Federal participation in State right-of-way costs. Bureau policies further provide that the State highway departments may utilize the services of well qualified and suitably equipped land acquisition organizations of counties, municipalities, or other local subdivisions only if their practices and procedures are in substantial conformity with the States' accepted practices and procedures. Also, Bureau field officials are required to review the practices actually followed by the State or its political subdivisions in the acquisition of rights-of-way to assure conformity with the policies and procedures accepted by the Bureau.

Our review of the right-of-way activities of the State of Tennessee disclosed that neither the State nor the Bureau had reviewed the right-of-way activities of political subdivisions sufficiently to be cognizant of the practices and procedures being followed. For example:

1. Negotiators in one county entered into agreements with certain property owners which provided that the owners not only would be paid the full value of the improvements but would also be allowed to retain such improvements. In other instances, property owners were paid the value of the improvements but were given the option of repurchasing the improvements at a nominal amount. We could find no documentation of the basis on which the negotiators gave these special considerations to the property owners. We discussed this matter with an official of the State office having jurisdiction over the county's acquisitions and were informed that provisions concerning improvements were inserted in the options or deeds by the negotiators at the request of the property owners, that the options or deeds were forwarded to the State highway department for approval, and that he assumed they were approved there. The State headquarters official in charge of property acquisition throughout the State was contacted on the same subject. He stated that his staff checked only the amounts on the options or deeds against the approved appraisal amounts and that the responsibility for checking the remainder, particularly the benefits to the owner, was the function of the local State official. We found, also, that Bureau employees had not compared the options or deeds with the applicable appraisals.

2. On project No. I-24-1(1)2, the State's claim for Federal participation in the cost of rights-of-way was \$411,115. Many of the appraisals on this project were made by fee appraisers pursuant to two contracts executed by a county official. Later, in an effort to improve appraisal procedures, the county official employed an appraisal company to make a technical review of certain of the appraisal reports that had been made. The appraisal company's review pointed out basic errors, inadequacies, and weaknesses in many of the appraisal reports. These appraisals were subsequently reviewed and approved for negotiating purposes by a State highway department reviewing appraiser. The Bureau cited only \$420 moving costs as ineligible for Federal participation. Bureau officials have advised us that reexamination of the appraisal reports is not planned.

The Bureau's regional engineer advised us that, on the basis of information received from State officials, he believed that State action with regard to the specific parcels involved was reasonable and proper in the circumstances, although documentation of the transactions was not adequate. The Bureau's Washington office informed us that the State had submitted for Bureau approval a revised statement of the right-of-way procedures being followed by the State and its political subdivisions. We noted that the Bureau had requested the regional engineer to obtain satisfactory clarification of a number of items included in these procedures and to verify the property management procedures being followed.



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